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Public Prosecutor v Rosmah bt Mansor

B HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NOS WA-45–9–03 OF 2019 AND WA-45–19–07 OF 2019
MOHAMED ZAINI MAZLAN J
1 SEPTEMBER 2022

C *Criminal Law — Bribery — Accepting gratification — Accused charged with three charges under s 16(a)(A) of Malaysian Anti-Corruption Commission Act 2009 for corruptly soliciting and receiving gratification — Whether elements of charge was fulfilled and established — Whether prosecution had made out prima facie case against accused — Whether prosecution had proved its case beyond* D *reasonable doubt — Whether accused's defence created reasonable doubt — Malaysian Anti-Corruption Commission Act 2009 s 16(a)(A)*

The accused was the wife of the former Prime Minister, Dato' Seri Mohd Najib bin Tun Abdul Razak ('Najib'). She was faced with three charges under E s 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act 2009'), where she was accused of corruptly soliciting and also receiving gratification as an inducement and reward for helping a company called Jepak Holdings Sdn Bhd ('Jepak') in getting a project from the Ministry of Education ('Ministry'). The crux of the case revolves around a project called F 'Projek Bersepadu Sistem Solar Photovalic (PV) Hibrid dan Penyelenggaraan dan Operasi/Diesel bagi 369 Sekolah Luar bandar Sarawak' ('the project'). Jepak had proposed the project to the Ministry sometime in 2015 to replace the Genset Diesel project that provided electricity to 369 rural and interior schools in Sarawak through diesel generator sets. Saidi bin Abang Samsudin ('Saidi') G founded Jepak back in 1985 and was the company's director and major shareholder. Saidi and Rayyan Radzwill bin Abdullah ('Rayyan') got acquainted in 2007 and became friends and business partners. Rayyan played a significant role in Jepak's lobbying for the project even though he had no equity in Jepak. Dato' Seri Mahdzir bin Khalid ('Mahdzir') was appointed the H Minister of Education in mid-2015. Saidi was elated with Mahdzir's appointment as he had known Mahdzir since the nineties and saw it as an opportunity to lobby for the project. However, Mahdzir did not share Saidi and Rayyan's enthusiasm. They decided to enlist the help of an influential person to get Najib's approval through his wife, namely the accused, with the help of the I accused's special officer, Dato' Rizal Mansor ('Rizal'). Rizal was initially charged with four charges under s 16(a)(A) of the MACC Act 2009 which were closely related to the charges the accused faced on the project. He was, however, discharged and acquitted from all charges as the prosecution opted to withdraw the charges against him. Saidi and Rayyan met up with Rizal in October 2015.

Rizal rejected their request and told them that the accused was not in the business of assisting contractors in getting Najib's approval for projects. Saidi and Rayyan then sought the help of Dato' Aazmey bin Abu Talib ('Aazmey'), who was the Secretary of UMNO's Pekan division in Pahang. Aazmey agreed to help and Saidi got what he wanted when Najib agreed to execute this new system and terminate the previous system. The Ministry eventually arranged a session for Saidi and his team to present their proposal for the project. The Ministry, however, did not revert with its response after the presentation. Saidi and Rayyan then met up with Rizal sometime in January or February 2016. Saidi implored Rizal to get the accused's assistance so that the Ministry could issue the letter of award soon. Saidi and Rayyan told Rizal that they would be willing to make a political donation to Najib to show their appreciation for his minutes and also because of the upcoming election. The duo also offered to contribute 10% of the value of the project. To induce Rizal, Saidi and Rayyan offered to pay him RM20m for facilitating their request. The accused agreed to meet them and the meet-up was around January or February 2016 at the accused's home at Jalan Langgak Duta. The accused told Saidi and Rayyan to discuss further with Rizal and instructed the latter to bring them to see Tan Sri Desmond Lim ('Desmond') and to increase the percentage offered to 15% which came up to RM187.5m. A few weeks later, Rizal brought Saidi to meet Desmond and Desmond's acquaintance, Lawrence Tee ('Lawrence'). Lawrence suggested a consultancy agreement between Jepak and another company that would act as Jepak's consultant which was eventually drawn up. Eventually, the Ministry's letter of award dated 10 November 2016 was issued, awarding Jepak the project for RM1.25 billion. Saidi then informed Rizal that he was prepared to pay RM5m first as part-payment towards the RM37.5m that he was supposed to pay annually over five years in respect of the RM187.5m payment promised to the accused. Rizal had instructed him to hand Lawrence the RM5m in cash at the Pavilion. Saidi who was accompanied by a friend withdrew RM5m cash and split the amount in half and put RM2.5m cash each into two bags. They met up with Rizal and his acquaintance named Dato' Ahmed Farriq bin Zainul Abidin ('Ahmed') at the lobby of the Pavilion office tower. Lawrence, however, refused to accept the money and Rizal was instructed by the accused to deliver the cash to the Seri Perdana complex (the Prime Minister's official residence) in Putrajaya. Rizal had, upon arriving at Seri Perdana, instructed two of the accused's butlers in uniform to carry the bags into the house. Ahmed also witnessed the two butlers pulling the bags into the residence. The contract for the project between the Ministry and Jepak was eventually signed on 20 June 2017. Rizal arranged for Saidi and Rayyan to meet the accused on 7 September 2017 at her house at Jalan Langgak Duta. On the day of the meeting, Saidi had arranged to withdraw RM1.5m cash from his bank account. This time around, his driver Shamsul accompanied him. He and Shamsul put the cash into two knapsacks and left for the accused's house. Upon reaching the accused's house, Shamsul put the two knapsacks in the living room. Rayyan took a video and some pictures with his mobile phone while

A waiting. Saidi told the accused that he brought the money as promised and would pay the rest based on the progressive payments received. Rizal saw the accused directing her butler to bring the two knapsacks to her upstairs room.

Held:

B

(1) The court could not see how the failure of the prosecution to charge Rizal, Saidi, Aazmey and Mahdzir for corruption could exonerate the accused or provide her with a defence. It was not uncommon for the prosecution to opt not to charge an accomplice to strengthen its case. It C was incredulous that Rizal would have the temerity to make the offer without the accused's instructions or knowledge. He had no clout to make a demand of such magnitude if not for the accused. Rizal was the accused's trusted aide and had gained her trust, even if he was not officially her special officer. Rizal did not stand to gain anything for D himself by testifying against the accused, as he had already been acquitted and discharged from the charges that were levelled against him. Once the first elements had been established, the presumption under s 50(1) of the MACC Act 2009 arose against the accused. The second element of the charge was therefore fulfilled, in that the accused was presumed to have E solicited the gratification as an inducement to assist Jepak in getting the project through direct negotiations with the Ministry. Therefore, the prosecution had successfully established the first and second elements of the first charge (see paras 104–105, 107–109 & 111).

F (2) There was no necessity to call the two butlers that handled the two bags. The court did not see how calling the two butlers could improve the prosecution's case any further, nor would adducing the CCTV recording make any difference. Rizal and Ahmed's direct testimonies were more than sufficient. It was incredulous to suggest that Rizal would have dared to abscond with the RM5m as he would have easily been found out. As G for the identity of the vehicle used by Rizal, it was an insignificant point as what mattered was that the bags were loaded into the vehicle used by Rizal. The payment of RM5m was in consonant with the first charge, in that the RM5m cash was part of the payments solicited. Therefore, the H prosecution had successfully proven the first element of the third charge. The rebuttable presumption under s 50(1) of the MACC Act 2009 arose against the accused regarding the second element of the third charge (see paras 119 & 122–125).

I (3) The court could not see how the discrepancies by the witnesses on where the two knapsacks were placed in the living room, which were insignificant, could lend any credence to the defence's argument. The bags were always in the custody of Saidi and Shamsul until they arrived in the accused's living room. The photos taken by Rayyan of the accused's living room also confirmed that the two knapsacks were placed there and

Saidi, Rayyan and Rizal were all there. Therefore, the chain of movement pertaining to the RM1.5m had been sufficiently established and it could be concluded that there was RM1.5m in the two knapsacks. This negated the defence's contention that Saidi had withdrawn RM1.5m for himself. The accused's response when Saidi told her that he brought the money proved that she had accepted the cash, and similar to the third charge, this was in consonant with the first charge, in that the RM1.5m cash was part of the payments solicited. There was also no necessity for the butlers to be called and testify, as Rizal's testimony was sufficient. The prosecution had successfully proven the first element of the second charge and the rebuttable presumption under s 50(1) of the MACC Act 2009 had as such arisen against the accused in respect of the second element (see paras 134, 137–138, 140 & 142).

(4) The investigation officer was merely assigned to investigate the crime that was alleged against the accused and there were other officers assigned to investigate the others who were similarly complicit in the alleged crime committed by the accused. As for the absence of a police report, it was trite that the omission of a police report was not fatal to a prosecution. Rizal had never sought to downplay his role or his ill-gotten gains. He did not prevaricate and had openly admitted soliciting and receiving gratification for himself from Saidi. The same goes for Saidi, who was the one that initiated the bribe and ended up giving the bribe. Like Rizal, he too never sought to downplay his misdeeds. That Rizal and Saidi's character was tainted however did not mean that their evidence was to be totally rejected. From the evidence, it was clear that the monies offered and paid were not political donations. The circumstances of the monies offered, given and received defied it being in the nature of a political donation. Firstly, the fact that the amount promised was a percentage of the project's value meant that the payment was for the accused's benefit. Secondly, the surreptitious manner that the payments were made ie in cash in large sums and delivered to the accused alone at her residences. Finally, there was no need to have Lawrence draw up an agreement for consultancy services if the payments were meant to be a political donation. The prosecution had succeeded in proving a prima facie case by adducing credible evidence to prove the elements of the three charges. The presumption under s 50 of the MACC Act 2009 had also arisen against the accused in respect of all three charges. Therefore the accused was called upon to enter her defence (see paras 145, 147, 150–151 & 164–165).

(5) The accused's denial in instructing Rizal to solicit from Saidi was untenable. To suggest that Rizal would boldly arrange such a scheme without the accused's knowledge was quite far-fetched. It was incredulous to suggest that Rizal had arranged for the duo to be at the accused's residence without her knowledge. It was also difficult to accept

A that Rizal had solicited for himself. It would be preposterous to accept that Rizal had drawn up this scheme for his benefit, as he would surely be found out. He was only able to solicit confidently as he was instructed by the accused. That Rizal went on to meet Desmond and subsequently liaise with Lawrence to draw up the consultancy agreement added weight
B to the fact that the solicitation was for the accused's benefit. Therefore the accused had failed to rebut the presumption of corrupt intention on a balance of probabilities and that the charge of solicitation had been proven beyond a reasonable doubt (see paras 215–217 & 219).

C (6) It was no coincidence that the RM5m was paid after the letter of award had been issued to Jepak. The accused's denial that Rizal had called her when he was with Lawrence and that she had told him to send the cash to Seri Perdana was untenable, as it defied belief that Rizal would had gone through the trouble of firstly going over to Lawrence to deliver the cash.
D The disparity in the accused's explanation bolstered the prosecution's case that she was at Seri Perdana which was her official residence. There would be no reason for Rizal to deliver the bags with RM5m cash there if not for the fact that they were meant for the accused. Therefore, the accused had failed to rebut the presumption on the third charge on a balance of
E probabilities and that the prosecution had proven the third charge beyond a reasonable doubt (see paras 221–222 & 224–225).

(7) The accused's defence was a bare denial. Her denial was devoid of any merits in light of the compelling testimonies of Rizal, Saidi, Rayyan and Shamsul. It was immaterial whether the knapsacks were handed over to
F her physically. That the knapsacks were left in the living room signified delivery. That she had instructed her butlers to bring the knapsacks upstairs to her room signified acceptance. The accused had failed to rebut the presumption on a balance of probabilities, and that the prosecution
G had proven its case beyond a reasonable doubt in respect of the second charge (see para 230).

(8) The accused was guilty of all three charges under s 16(a)(A) of the MACC Act 2009. The accused was sentenced to ten years of imprisonment for each charge with the sentences to run concurrently. The sentence was to
H run from the date of judgment. The sentences were to run concurrently as the offences committed were intimately connected with each other. The accused was also fined a total of RM970m, and in default shall be imprisoned for ten years to run concurrently for each fine (see paras 239 & 249).

I **[Bahasa Malaysia summary**

Tertuduh ialah isteri kepada bekas Perdana Menteri, Dato' Seri Mohd Najib bin Tun Abdul Razak ('Najib'). Beliau berhadapan dengan tiga pertuduhan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 ('Akta

SPRM 2009'), di mana beliau dituduh secara rasuah meminta dan juga menerima suapan sebagai dorongan dan upah untuk membantu sebuah syarikat bernama Jepak Holdings Sdn Bhd ('Jepak') mendapatkan projek daripada Kementerian Pendidikan ('Kementerian'). Intipati kes itu berkisar tentang satu projek yang dipanggil 'Projek Bersepadu Sistem Solar Photovalic (PV) Hibrid dan Penyelenggaraan dan Operasi/Diesel bagi 369 Sekolah Luar bandar Sarawak' ('projek'). Jepak telah mencadangkan projek itu kepada Kementerian pada 2015 untuk menggantikan projek Genset Diesel yang membekalkan tenaga elektrik kepada 369 sekolah luar bandar dan pedalaman di Sarawak melalui set penjana diesel. Saidi bin Abang Samsudin ('Saidi') mengasaskan Jepak pada tahun 1985 dan merupakan pengarah syarikat dan pemegang saham utama. Saidi dan Rayyan Radzwill bin Abdullah ('Rayyan') berkenalan pada tahun 2007 dan menjadi rakan dan rakan kongsi perniagaan. Rayyan memainkan peranan penting dalam melobi Jepak untuk projek itu walaupun dia tidak mempunyai ekuiti dalam Jepak. Dato' Seri Mahdzir bin Khalid ('Mahdzir') telah dilantik sebagai Menteri Pendidikan pada pertengahan 2015. Saidi gembira dengan pelantikan Mahdzir kerana dia mengenali Mahdzir sejak tahun sembilan puluhan dan melihatnya sebagai peluang untuk melobi projek itu. Walau bagaimanapun, Mahdzir tidak berkongsi semangat Saidi dan Rayyan. Mereka memutuskan untuk mendapatkan bantuan orang yang berpengaruh bagi mendapatkan persetujuan Najib melalui isterinya iaitu tertuduh dengan bantuan Pegawai Khas tertuduh, Dato' Rizal Mansor ('Rizal'). Rizal pada mulanya didakwa atas empat pertuduhan di bawah s 16(a)(A) Akta SPRM 2009 yang berkait rapat dengan pertuduhan yang dihadapi tertuduh ke atas projek itu. Dia bagaimanapun dilepaskan dan dibebaskan daripada semua pertuduhan kerana pihak pendakwaan memilih untuk menarik balik pertuduhan terhadapnya. Saidi dan Rayyan bertemu dengan Rizal pada Oktober 2015. Rizal menolak permintaan mereka dan memberitahu mereka bahawa tertuduh tidak terlibat dalam membantu kontraktor mendapatkan kelulusan Najib untuk projek. Saidi dan Rayyan kemudiannya meminta bantuan Dato' Aazmey bin Abu Talib ('Aazmey'), yang merupakan Setiausaha UMNO Bahagian Pekan di Pahang. Aazmey bersetuju untuk membantu Saidi mendapat apa yang dia mahu apabila Najib bersetuju untuk melaksanakan sistem baru ini dan menamatkan sistem sebelumnya. Kementerian akhirnya mengatur sesi untuk Saidi dan pasukannya membentangkan cadangan mereka untuk projek itu. Kementerian bagaimanapun tidak mengembalikan jawapannya selepas pembentangan itu. Saidi dan Rayyan kemudian bertemu dengan Rizal pada Januari atau Februari 2016. Saidi memohon Rizal mendapatkan bantuan tertuduh supaya Kementerian boleh mengeluarkan surat penganugerahan itu tidak lama lagi. Saidi dan Rayyan memberitahu Rizal bahawa mereka sanggup memberikan derma politik kepada Najib untuk menunjukkan penghargaan mereka terhadap minitnya dan juga kerana pilihan raya yang akan datang. Kedua-duanya juga menawarkan untuk menyumbang 10% daripada nilai projek. Untuk mendorong Rizal, Saidi dan Rayyan menawarkan untuk

membayarnya RM20 juta kerana memudahkan permintaan mereka. Tertuduh bersetuju untuk bertemu mereka dan pertemuan itu sekitar Januari atau Februari 2016 di rumah tertuduh di Jalan Langgak Duta. Tertuduh memberitahu Saidi dan Rayyan untuk berbincang lebih lanjut dengan Rizal dan mengarahkan Rizal membawa mereka berjumpa Tan Sri Desmond Lim ('Desmond') dan meningkatkan peratusan yang ditawarkan kepada 15% yang mencecah RM187.5 juta. Beberapa minggu kemudian, Rizal membawa Saidi bertemu Desmond dan kenalan Desmond, Lawrence Tee ('Lawrence'). Lawrence mencadangkan perjanjian perundingan antara Jepak dan syarikat lain yang akan bertindak sebagai perunding Jepak yang akhirnya dirangka. Akhirnya, surat penganugerahan Kementerian bertarikh 10 November 2016 telah dikeluarkan, yang menganugerahkan projek Jepak dengan harga RM1.25 bilion. Saidi kemudian memaklumkan Rizal bahawa dia bersedia membayar RM5 juta dahulu sebagai sebahagian daripada RM37.5 juta yang sepatutnya dibayar setiap tahun dalam tempoh lima tahun bagi bayaran RM187.5 juta yang dijanjikan kepada tertuduh. Rizal telah mengarahkannya menyerahkan wang tunai RM5 juta kepada Lawrence di Pavilion. Saidi yang ditemani rakannya mengeluarkan wang tunai RM5 juta dan membahagikan jumlah itu kepada dua dan memasukkan wang tunai RM2.5 juta setiap satu ke dalam dua beg. Mereka bertemu dengan Rizal dan kenalannya bernama Dato' Ahmed Farriq bin Zainul Abidin ('Ahmed') di lobi menara pejabat Pavilion. Lawrence bagaimanapun enggan menerima wang itu dan Rizal diarahkan tertuduh menghantar wang tunai itu ke kompleks Seri Perdana (kediaman rasmi Perdana Menteri) di Putrajaya. Rizal telah, sebaik tiba di Seri Perdana, mengarahkan dua orang gaji beruniform tertuduh untuk membawa beg masuk ke dalam rumah. Ahmed turut menyaksikan dua orang gaji itu menarik beg masuk ke dalam kediaman. Kontrak projek antara Kementerian dan Jepak akhirnya ditandatangani pada 20 Jun 2017. Rizal mengatur agar Saidi dan Rayyan bertemu tertuduh pada 7 September 2017 di rumahnya di Jalan Langgak Duta. Pada hari pertemuan itu, Saidi telah mengatur untuk mengeluarkan wang tunai RM1.5 juta daripada akaun banknya. Kali ini pemandunya Shamsul yang menemaninya. Dia dan Shamsul memasukkan wang tunai itu ke dalam dua beg beg dan bertolak ke rumah tertuduh. Sebaik tiba di rumah tertuduh, Shamsul meletakkan dua beg itu di ruang tamu. Rayyan mengambil video dan beberapa keping gambar dengan telefon bimbitnya sementara menunggu. Saidi memberitahu tertuduh bahawa dia membawa wang seperti yang dijanjikan dan akan membayar selebihnya berdasarkan bayaran progresif yang diterima. Rizal melihat tertuduh mengarahkan orang gajinya membawa dua beg beg itu ke biliknya di tingkat atas.

Diputuskan:

(1) Mahkamah tidak dapat melihat bagaimana kegagalan pihak pendakwaan untuk mendakwa Rizal, Saidi, Aazmey dan Mahdzir untuk rasuah boleh

membebaskan tertuduh atau memberikan pembelaan kepadanya. Ia bukan perkara biasa bagi pihak pendakwaan memilih untuk tidak mendakwa rakan sejenayah untuk mengukuhkan kesnya. Adalah tidak dipercayai Rizal akan berani membuat tawaran tanpa arahan atau pengetahuan tertuduh. Dia tidak mempunyai pengaruh untuk membuat tuntutan sebesar itu jika tidak kerana tertuduh. Rizal ialah pembantu tertuduh yang dipercayai dan telah mendapat kepercayaannya, walaupun dia bukan pegawai khasnya secara rasmi. Rizal tidak berhasrat untuk mendapatkan apa-apa untuk dirinya sendiri dengan memberi keterangan terhadap tertuduh, kerana dia telah pun dibebaskan dan dilepaskan daripada pertuduhan yang dikenakan terhadapnya. Apabila elemen pertama telah diwujudkan, anggapan di bawah s 50(1) Akta SPRM 2009 timbul terhadap tertuduh. Elemen kedua pertuduhan itu telah dipenuhi, iaitu tertuduh dianggap telah meminta suapan itu sebagai dorongan untuk membantu Jepak mendapatkan projek itu melalui rundingan terus dengan Kementerian. Oleh itu, pihak pendakwaan telah berjaya membuktikan elemen pertama dan kedua pertuduhan pertama (lihat perenggan 104–105, 107–109 & 111).

(2) Tidak ada keperluan untuk memanggil dua orang gaji yang mengendalikan kedua-dua beg itu. Mahkamah tidak melihat bagaimana memanggil kedua-dua orang gaji itu boleh memperbaiki kes pendakwaan dengan lebih lanjut, mahupun mengemukakan rakaman CCTV membawa sebarang perbezaan. Kesaksian langsung Rizal dan Ahmed adalah lebih daripada mencukupi. Adalah tidak dipercayai untuk mencadangkan bahawa Rizal akan berani melarikan diri dengan wang RM5 juta kerana dia akan diketahui dengan mudah. Bagi identiti kenderaan yang digunakan Rizal, ia adalah perkara yang tidak penting kerana apa yang penting ialah beg-beg itu dimuatkan ke dalam kenderaan yang digunakan Rizal. Bayaran RM5 juta adalah selaras dengan pertuduhan pertama, kerana wang tunai RM5 juta adalah sebahagian daripada bayaran yang diminta. Oleh itu, pihak pendakwaan telah berjaya membuktikan elemen pertama pertuduhan ketiga. Anggapan boleh disangkal di bawah s 50(1) Akta SPRM 2009 timbul terhadap tertuduh berhubung elemen kedua pertuduhan ketiga (lihat perenggan 119 & 122–125).

(3) Mahkamah tidak dapat melihat bagaimana percanggahan saksi di mana dua beg diletakkan di ruang tamu, yang merupakan tidak penting, boleh memberi kepercayaan kepada hujahan pembelaan. Beg-beg itu sentiasa dalam jagaan Saidi dan Shamsul sehingga tiba di ruang tamu tertuduh. Gambar yang diambil oleh Rayyan di ruang tamu tertuduh juga mengesahkan dua beg itu diletakkan di situ dan Saidi, Rayyan dan Rizal berada di situ. Oleh itu, rantaian pergerakan yang berkaitan dengan RM1.5 juta telah diwujudkan dengan secukupnya dan boleh disimpulkan bahawa terdapat RM1.5 juta dalam dua beg itu. Ini

menafikan dakwaan pihak pembelaan bahawa Saidi telah mengeluarkan RM1.5 juta untuk dirinya sendiri. Maklum balas tertuduh apabila Saidi memberitahunya bahawa dia membawa wang itu membuktikan dia telah menerima wang tunai itu, dan sama seperti pertuduhan ketiga, ini adalah selaras dengan pertuduhan pertama, iaitu wang tunai RM1.5 juta adalah sebahagian daripada bayaran yang diminta. Juga tidak ada keperluan untuk orang gaji dipanggil dan memberi keterangan, kerana keterangan Rizal sudah memadai. Pihak pendakwaan telah berjaya membuktikan elemen pertama pertuduhan kedua dan anggapan boleh disangkal di bawah s 50(1) Akta SPRM 2009 telah berbangkit terhadap tertuduh berkenaan dengan elemen kedua (lihat perenggan 134, 137–138, 140 & 142).

(4) Pegawai penyiasat hanya ditugaskan untuk menyiasat jenayah yang didakwa terhadap tertuduh dan terdapat pegawai lain yang ditugaskan untuk menyiasat yang lain yang turut terlibat dalam jenayah yang didakwa dilakukan oleh tertuduh. Bagi ketiadaan laporan polis, adalah sesuatu yang tetap bahawa peninggalan laporan polis tidak *fatal* kepada pihak pendakwaan. Rizal tidak pernah cuba merendahkan peranannya atau keuntungan yang diperolehnya secara haram. Dia tidak menyulitkan dan secara terbuka mengaku meminta dan menerima suapan untuk dirinya sendiri daripada Saidi. Begitu juga dengan Saidi, yang memulakan rasuah dan akhirnya memberi rasuah. Seperti Rizal, dia juga tidak pernah cuba memperkecilkan kesalahannya. Perwatakan Rizal dan Saidi yang tercemar bagaimanapun tidak bermakna keterangan mereka ditolak sama sekali. Daripada keterangan, jelas bahawa wang yang ditawarkan dan dibayar bukanlah derma politik. Keadaan wang yang ditawarkan, diberikan dan diterima menafikan ia bersifat derma politik. Pertama, hakikat bahawa jumlah yang dijanjikan adalah peratusan daripada nilai projek bermakna bayaran itu adalah untuk faedah tertuduh. Kedua, cara sembunyi-sembunyi pembayaran dibuat iaitu secara tunai dalam jumlah yang banyak dan dihantar kepada tertuduh seorang diri di kediamannya. Akhir sekali, Lawrence tidak perlu membuat perjanjian untuk perkhidmatan perundingan jika pembayaran itu dimaksudkan sebagai derma politik. Pihak pendakwaan telah berjaya membuktikan kes prima facie dengan mengemukakan keterangan yang boleh dipercayai untuk membuktikan elemen ketiga-tiga pertuduhan itu. Anggapan di bawah s 50 Akta SPRM 2009 juga timbul terhadap tertuduh berhubung ketiga-tiga pertuduhan. Oleh itu tertuduh dipanggil untuk membela diri (lihat perenggan 145, 147, 150–151 & 164–165).

(5) Penafian tertuduh dalam mengarahkan Rizal meminta daripada Saidi tidak dapat dipertahankan. Cadangan bahawa Rizal berani mengatur rancangan sedemikian tanpa pengetahuan tertuduh adalah sesuatu yang tidak masuk akal. Adalah tidak dipercayai untuk mencadangkan bahawa

Rizal telah mengatur agar kedua-dua mereka berada di kediaman tertuduh tanpa pengetahuannya. Sukar juga untuk menerima bahawa Rizal telah meminta untuk dirinya sendiri. Adalah tidak masuk akal untuk menerima bahawa Rizal telah merangka skim ini untuk kepentingannya, kerana dia pasti akan diketahui. Dia hanya mampu meminta dengan yakin seperti yang diarahkan oleh tertuduh. Bahawa Rizal terus berjumpa Desmond dan kemudiannya berhubung dengan Lawrence untuk merangka perjanjian perundingan menambah berat kepada fakta bahawa permohonan itu adalah untuk faedah tertuduh. Oleh itu tertuduh telah gagal untuk menyangkal anggapan niat rasuah pada imbangan kebarangkalian dan bahawa pertuduhan meminta telah dibuktikan di luar keraguan munasabah (lihat perenggan 215–217 & 219).

(6) Bukan kebetulan bahawa RM5 juta telah dibayar selepas surat penganugerahan dikeluarkan kepada Jepak. Penafian tertuduh bahawa Rizal telah menelefonnya semasa dia bersama Lawrence dan bahawa dia telah memberitahunya untuk menghantar wang tunai ke Seri Perdana tidak dapat dipertahankan, kerana ia menentang kepercayaan bahawa Rizal akan menghadapi kesusahan untuk mula-mula pergi ke Lawrence untuk menyampaikan wang. Perbezaan penjelasan tertuduh menguatkan kes pendakwaan bahawa dia berada di Seri Perdana yang merupakan kediaman rasminya. Tidak ada sebab untuk Rizal menyerahkan beg-beg itu dengan wang tunai RM5 juta di sana jika bukan kerana fakta bahawa ia ditujukan untuk tertuduh. Oleh itu, tertuduh telah gagal untuk menyangkal anggapan pada pertuduhan ketiga atas imbangan kebarangkalian dan bahawa pihak pendakwaan telah membuktikan pertuduhan ketiga melampaui keraguan munasabah (lihat perenggan 221–222 & 224–225).

(7) Pembelaan tertuduh adalah penafian kosong. Penafiannya tidak mempunyai apa-apa merit berdasarkan keterangan Rizal, Saidi, Rayyan dan Shamsul. Adalah tidak penting sama ada beg itu diserahkan kepadanya secara fizikal. Bahawa beg itu ditinggalkan di ruang tamu menandakan penghantaran. Bahawa dia telah mengarahkan orang gajinya untuk membawa beg ke tingkat atas ke biliknya menandakan penerimaan. Tertuduh telah gagal untuk menyangkal anggapan atas imbangan kebarangkalian, dan bahawa pihak pendakwaan telah membuktikan kesnya melampaui keraguan munasabah berkenaan dengan pertuduhan kedua (lihat perenggan 230).

(8) Tertuduh bersalah atas ketiga-tiga pertuduhan di bawah s 16(a)(A) Akta SPRM 2009. Tertuduh dijatuhi hukuman penjara sepuluh tahun bagi setiap pertuduhan dengan hukuman berjalan serentak. Hukuman itu bermula dari tarikh penghakiman. Hukuman itu dijalankan serentak kerana kesalahan yang dilakukan adalah berkait rapat antara satu sama

A lain. Tertuduh juga didenda sejumlah RM970 juta, dan jika ingkar hendaklah dipenjarakan selama sepuluh tahun untuk dijalankan serentak bagi setiap denda (lihat perenggan 239 & 249).]

Cases referred to

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Attan bin Abdul Gani v PP [1970] 2 MLJ 143b (refd)
Balachandran v PP [2005] 2 MLJ 301, FC (refd)
Deputy Public Prosecutor v Kilbourne [1973] AC 729, HL (refd)
C *Dato' Seri Anwar bin Ibrahim v PP and another appeal* [2015] 2 MLJ 293; [2015] 2 CLJ 145, FC (refd)
Hari Ram Seghal v PP [1981] 1 MLJ 165, HC (refd)
Lee Chow Meng v PP [1978] 2 MLJ 36, FC (refd)
Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor [2003] 2 MLJ 97,
D CA (refd)
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E *Mat v PP* [1963] 1 MLJ 263 (refd)
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F *Noordin Sadakathullah & Ors v PP* [2019] 1 CLJ 748, CA (refd)
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G 8 CLJ 319, HC (refd)
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PP v WRP Asia Pacific Sdn Bhd [2016] 11 MLJ 295; [2016] 1 LNS 760, HC
H (refd)
R v Power [1994] 1 SCR 601, SC (distd)
Shyam Sunder v State [1997] CriLJ 35, HC (refd)
Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209; [2021] 6 CLJ 199, FC (refd)
I *Thavanathan a/l Subramaniam v PP* [1997] 2 MLJ 401, SC (refd)

Legislation referred to

Anti-Corruption Act 1997 (repealed by Malaysian Anti-Corruption Commission Act 2009) s 42

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ss 32, 40, 72
Courts of Judicature Act 1964 s 3
Criminal Procedure Code ss 173(m)(i), 180(1), (2), (3), (4), 181, 182A, 283(1), 402B, 402B(2), (6), 417, 425
Evidence Act 1950 ss 54, 54(2)(b), 145, 155
Federal Constitution art 145(3)
Malaysian Anti-Corruption Commission Act 2009 ss 3, 16(a)(A), 24(1), 41A, 50, 50(1), 51(1)(a), 52, 52(1)(a), (2)
Prevention of Corruption Act 1961 (repealed by Malaysian Anti-Corruption Commission Act 2009) s 14

Gopal Sri Ram (with Idham Abdul Ghani, Ahmad Akram Gharib, Mohamad Mustaffa P Kunyalam, Deepa Nair Thevaharan, Nadia Mohd Izhar, Najwa Bistaman, Mohd Farizul Hassan Bakri, Poh Yih Tinn, Muhamad Zuraidi Zulkifli, Fariza Amira Azman, Nur Syakirin Yaccob, Wafa Zainal Abidin and Nor Syaliati Mohd Sobri) (Attorney General's Chambers) for the prosecution.
Jagjit Singh (with Akberdin Abdul Kader, Azrul Zulkifli Stork, Asmadi Hussin, Noor Hajran Mohd Noor, Ummi Kartini Abd Latiff, Meor Hafiz Salehin, Azalea Nazihah Zulkefli and Andy Suffian Akberdin) (Jagjit Singh & Co); (Akberdin & Co) and (Azharudin & Assoc) for the accused.

Mohamed Zaini Mazlan J:

INTRODUCTION

[1] The accused is the wife of the former Prime Minister, Dato' Seri Mohd Najib bin Tun Abdul Razak. She is faced with three charges under s 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009, where she is accused of corruptly soliciting and also receiving gratification as an inducement and reward for helping a company called Jepak Holdings Sdn Bhd in getting a project from the Ministry of Education.

[2] Although the accused did not hold any office in the government, the prosecution alleged that she held considerable influence and that she had used it to benefit herself corruptly.

[3] The accused was initially charged in the sessions court. Her cases were subsequently transferred to the High Court pursuant to her application under s 417 of the Criminal Procedure Code, which was not objected to by the prosecution. Two of the charges were in Case No WA-45–9–03 of 2019, and was transferred to Justice Collin Sequerah's court, where else one other charge in Case No WA-45–19–07 of 2019 was transferred to this court. The case in Justice Collin Sequerah's court was subsequently transferred to this court pursuant to the prosecution's application, who then applied to have it jointly

tried with the charge in Case No WA-45–19–07 of 2019.

THE CHARGES

[4] The three charges are as follows:

The first charge: Case No WA-45–9–03/2019

Bahawa kamu, diantara bulan Januari dan April 2016, di Lygon Cafe, G-24, Ground Floor, Sunway Putra Mall, 100, Jalan Putra, Chow Kit, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah meminta bagi diri kamu melalui Rizal bin Mansor (No K/P: 740809–06–5065) suatu suapan, iaitu, wang sejumlah RM187,500,000.00 yang merupakan 15% daripada nilai kontrak daripada Saidi bin Abang Samsudin (No K/P: 590503–13–5445) yang merupakan Pengarah Urusan Jepak Holdings Sdn Bhd (No. Syarikat: 138865-H), sebagai dorongan untuk melakukan suatu perkara yang dicadangkan, iaitu, membantu Jepak Holdings Sdn Bhd mendapatkan 'Projek Bersepadu Sistem Solar Photovoltaic (PV) Hibrid dan Penyelenggaraan dan Operasi Genset/Diesel bagi 369 Sekolah Luar Bandar Sarawak' bernilai RM1,250,000,000.00 secara rundingan terus daripada Kementerian Pendidikan Malaysia, dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah perenggan 16(a) (A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah subseksyen 24(1) Akta yang sama.

The second charge: Case No WA-45–9–03/2019

Bahawa kamu, pada 07 September 2017, di No. 11, Jalan Langgak Duta, Taman Duta, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima bagi diri kamu suatu suapan, iaitu, wang sejumlah RM1,500,000.00 daripada Saidi bin Abang Samsudin yang merupakan Pengarah Urusan Jepak Holding Sdn Bhd, sebagai suatu upah bagi diri kamu kerana telah melakukan suatu perkara, iaitu, membantu Jepak Holdings Sdn Bhd, mendapatkan 'Projek Bersepadu Sistem Solar Photovoltaic (PV) Hibrid dan Penyelenggaraan dan Operasi Genset/Diesel bagi 369 Sekolah Luar Bandar Sarawak' bernilai RM1,250,000,000.00 secara rundingan terus daripada Kementerian Pendidikan Malaysia, dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah perenggan 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum dibawah subseksyen 24(1) Akta yang sama.

The third charge: Case No WA-45–19–07/2019

Bahawa kamu, pada 20 Disember 2016, bertempat di kediaman Seri Perdana, Persiaran Seri Perdana Presint 10, 62250 Putrajaya, dalam Wilayah Persekutuan Putrajaya, telah secara rasuah menerima suatu suapan untuk diri kamu, iaitu wang tunai sejumlah RM5,000,000.00 daripada Saidi bin Abang Samsudin (No K/P: 590503–13–5445) yang merupakan Pengarah Urusan Jepak Holdings Sdn Bhd (No Syarikat:138865-H) melalui Rizal bin Mansor (No K/P: 740809–06–5065) sebagai upah kerana telah membantu Jepak Holdings Sdn Bhd mendapatkan projek yang dikenali sebagai 'Projek Bersepadu Sistem Solar Photovoltaic (PV) Hibrid dan Penyelenggaraan dan Operasi Genset/Diesel bagi 369 Sekolah Luar Bandar Sarawak' bernilai RM1,250,000,000.00 secara rundingan terus daripada Kementerian Pendidikan Malaysia, dan oleh yang demikian kamu telah melakukan

suatu kesalahan di bawah perenggan 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah subseksyen 24(1) Akta yang sama.

THE PROSECUTION'S CASE

Prosecution's witnesses

[5] 23 witnesses testified for the prosecution. They were as follows:

PW	Name	Designation
PW1	Huzairi bin Zainal Abidin	Director of Services and Human Resources Management Department, Prime Minister's Office.
PW2	Mohd Redzuan bin Othaman	Assistant Superintendent, Malaysian Anti-Corruption Commission.
PW3	Azimah bt Aziz	Chief Cashier, Maybank, Medan Tuanku branch.
PW4	Shamsul Rizal bin Sharbini	Saidi bin Abang Samsudin's driver.
PW5	Dato' Seri Mahdzir bin Khaiid	Former Minister of Education (2015–2018).
PW6	Tan Sri Madinah bt Mohamad	Former Secretary General, Ministry of Education (2013–2016).
PW7	Dato' Othman bin Semail	Secretary General of the Finance Ministry's Procurement Department (2015–2018).
PW8	Razak bin Othman	Businessman, Saidi bin Abang Samsudin's acquaintance.
PW9	Dato' Ahmed Farriq bin Zainul Abidin	Businessman, Dato' Rizal Mansor's acquaintance.
PW10	Kamarudin bin Abdullah	Former Division Secretary in the Ministry of Education's Acquisition and Asset Management Department (2016–2017).
PW11	Low Ai Lin	Assistant Manager, Maybank, Medan Tuanku branch.
PW12	Dato' Seri Alias bin Ahmad	Former Secretary General, Ministry of Education (2016–2018).
PW13	Wong Ping	Branch Manager, CIMB Bank, Bintulu Central branch.
PW14	Muhammad Na'im bin Mahmod	Assistant Superintendent, Malaysian Anti-Corruption Commission.
PW15	Rekhraj Singh a/l Jaswant	Superintendent, Malaysian Anti-Corruption Commission.

PW	Name	Designation
PW16	Rayyan Radzwill bin Abdullah	Saidi bin Abang Samsudin's business partner.
PW17	Saidi bin Abang Samsudin	Managing Director of Jepak Holdings Sdn Bhd.
PW18	Rafidah bt Yahaya	Deputy Registrar of the Companies Commission Malaysia.
PW19	Moses ak Lawrence	Assistant Superintendent, Malaysian Anti-Corruption Commission.
PW20	Lawrence Tee Kien Moon	Self-employed.
PW21	Rizal bin Mansor	Special Officer, Prime Minister's Office (2009–2018).
PW22	Nursyurah bin Sairan	Chief Assistant Secretary, Prime Minister's Office.
PW23	Noornabilah bt Mohd Aziman	Investigation Officer, Malaysian Anti-Corruption Commission.

The Solar Hybrid project

[6] The crux of the case revolves around a project called 'Projek Bersepadu Sistem Solar Photovalic (PV) Hibrid dan Penyelenggaraan dan Operasi/Diesel bagi 369 Sekolah Luar Bandar Sarawak' ('the project'). Jepak Holdings Sdn Bhd ('Jepak') had proposed the project to the Education Ministry sometime in 2015 to replace the Genset Diesel project. The Genset Diesel project has been in place since 2010. It provided electricity to 369 rural and interior schools in Sarawak through diesel generator sets. 30 contractors under contract with the Education Ministry provided and maintained these generator sets until 31 December 2016. Jepak, as one of the contractors, catered to 16 schools in the Daro/Mukah zone and 12 schools in the Baram II zone.

[7] Saidi bin Abang Samsudin (PW17) ('Saidi') founded Jepak back in 1985 and was the company's director and major shareholder. The project was his brainchild.

[8] The two main characters involved in Jepak's proposal for the project were Saidi and Rayyan Radzwill bin Abdullah (PW16) ('Rayyan'). Saidi and Rayyan got acquainted in 2007 and became friends and business partners. Saidi had roped in Rayyan to help him with the project. Rayyan played a significant role in Jepak's lobbying for the project even though he had no equity in Jepak.

[9] Dato' Seri Mahdzir bin Khalid (PW5) ('Mahdzir') was appointed the Minister of Education in mid-2015. Saidi was elated with Mahdzir's appointment as he had known Mahdzir since the nineties and saw it as an opportunity to lobby for the project.

[10] Saidi enlisted Rayyan's help to draft Jepak's letter of proposal for the project. The project proposed by Jepak consisted of two components:

(a) taking over the maintenance of the diesel generator sets used by the current contractors for the Genset Diesel project; and

(b) developing the photovoltaic solar panel in a hybrid manner.

Jepak had proposed a cost of RM1.25 billion for a five-year term.

[11] The duo presented Mahdzir with the letter of proposal. Much to their disappointment, Mahdzir did not share their enthusiasm. Mahdzir said the project would require specialised skills, which he doubted Jepak had. Mahdzir also had reservations about Jepak's capability to undertake such a massive commitment as there were 369 schools involved. Furthermore, the Ministry was still tied to its contract with the contractors for the Genset Diesel project. Mahdzir nevertheless minuted on the proposal letter 'Sila pertimbangkan untuk presentation' (Please consider for presentation) for his officer's attention.

[12] Saidi and Rayyan were undeterred. They decided to enlist the help of an influential person to get the then Prime Minister, Dato' Seri Mohd Najib Tun Abdul Razak's ('Najib') approval through his wife, namely the accused, with the help of the accused's special officer, Dato' Rizal Mansor (PW21) ('Rizal').

[13] Rizal was initially charged with four charges under s 16(a)(A) of the MACC Act 2009. The charges levelled against him were closely related to the charges the accused faced on the project. His cases were also initially fixed before this court. He was, however, discharged and acquitted from all charges as the prosecution opted to withdraw the charges against him when his cases were called up for case management on 8 January 2020.

[14] Rizal's employment under the Prime Minister's Office commenced at the end of 2009. He was employed under a contract for a two-year period, which was renewed every two years until mid-2018. His office was in the Prime Minister's office. During Najib's tenure, the Prime Minister's office catered to the accused's position and duties as the Prime Minister's wife. A department called 'First Lady of Malaysia' ('FLOM') was formed for this purpose.

[15] FLOM was created to assist the accused with her official duties as the

Prime Minister's wife and had several officers serving it. The FLOM department only existed during Najib's tenure. The Prime Minister's spouse prior to Najib and after Najib only had a private secretary assigned to them. FLOM was not given a budget, but its staff were salaried and entitled to travel expenses and overtime claims. The head of FLOM was Datuk Seri Siti Azizah Sheik Abod. FLOM first appeared in the Prime Minister's department's website directory. It became an issue with the public for two reasons: (a) the perception that the accused had an office in the Prime Minister's department when she did not have any position in the government; and (b) some thought that the title FLOM should be designated for the Yang di-Pertuan Agong's consort. FLOM's name was then changed to special division in August or September 2009, but its function remained the same.

[16] Saidi and Rayyan met up with Rizal in October 2015. They asked Rizal whether he could get the accused to obtain Najib's approval for the project. Rizal rejected their request and told them that the accused was not in the business of assisting contractors in getting Najib's approval for projects.

[17] Saidi and Rayyan then sought the help of a Dato' Aazmey bin Abu Talib ('Aazmey'), who was the Secretary of UMNO's (United Malays National Organisation) Pekan division in Pahang. Najib was the head of this division. Aazmey agreed to help. Saidi then prepared another proposal letter dated 23 November 2015, which was addressed to Najib. He then handed the letter to Aazmey. Saidi got what he wanted as Aazmey returned with the letter with Najib's minutes and a letter dated 1 December 2015 from the Prime Minister's Office. Najib's minutes on Jepak's letter read: 'Bersetuju dilaksanakan sistem baru ini dan batalkan sistem lama' (Agree to execute this new system and terminate the previous system). Saidi went to see Mahdzir with both letters on 16 December 2015.

[18] Mahdzir then instructed his officer in the Education Ministry to form a technical team and call upon Jepak to submit its proposal. Mahdzir did not follow up on his instructions but had discussed Najib's minutes with the then Secretary General of the Education Ministry, Tan Sri Madinah bt Mohamad (PW6) ('Madinah'), and the Ministry's Legal Advisor. The consensus was that the Ministry could not simply terminate the Genset Diesel contracts as the legal and financial implications would be dire. The Ministry also had plans to eventually connect some of the schools to the national electricity grid.

[19] Saidi and Rayyan, in the meantime, kept pushing Mahdzir to hasten the approval for the project. Mahdzir had told them they would need to go through the usual procedure and wait for the Ministry's official response. Rayyan was not amused and even chastised Mahdzir and reminded him that the Prime Minister had instructed the project to proceed.

[20] The Ministry eventually arranged a session for Saidi and his team to present their proposal for the project. The Ministry, however, did not revert with its response after the presentation. Saidi was frustrated and told Rayyan that he would push Rizal to get the accused's support.

[21] Saidi and Rayyan decided to meet Rizal again to convince him. They met in January 2016 at the Seri Pacific Hotel in Kuala Lumpur. They showed Rizal Jepak's letter of proposal, which had Najib's minutes, and appraised Rizal of Aazmey's assistance. Rizal did not make any commitment.

[22] Saidi and Rayyan met up with Rizal sometime in January or February 2016 at the Lygon Bistro, Sunway Putra Mall. They complained to Rizal of the difficulties faced and, in particular, of Mahdzir's lack of response despite Najib's minutes. Saidi then implored Rizal to get the accused's assistance so that the Ministry could issue the letter of award soon. Saidi and Rayyan told Rizal that they would be willing to make a political donation to Najib to show their appreciation for his minutes and also because of the upcoming election. The duo also offered to contribute 10% of the value of the project.

[23] Saidi and Rayyan urged Rizal to arrange for them to meet the accused so that they could explain the project and make the political contribution offer. Rizal did not see the need for them to make such a significant contribution to Najib through the accused unless they wanted the accused to influence Najib, as they could easily give the contribution to Najib through Aazmey. To induce Rizal, Saidi and Rayyan offered to pay him RM20m for facilitating their request.

[24] Rizal relented and conveyed their request to the accused, including their political contribution offer. Rizal showed the accused Jepak's letter of proposal that had Najib's minutes. He also told her of their intention to donate 10% of the contract's value of RM1.25 billion. That piqued her interest, and she then agreed to meet them. Rizal proceeded to make arrangements for Saidi and Rayyan to meet the accused. The meet-up was around January or February 2016 at the accused's home at Jalan Langgak Duta. Rizal had introduced Saidi to the accused as the owner of Jepak and Rayyan as the partner. Saidi briefed the accused on the project and showed her Jepak's letter of proposal to the Education Ministry dated 23 November 2015, which had Najib's minutes. Saidi then asked the accused's help to hasten the issuance of the letter of award. Saidi also said that he would make a political contribution of 10% of the project's value of RM1.25 billion to the accused. The accused was supportive of the project and also told them that UMNO's political status is dire and that the Pekan division, in particular, needs political funding. She then told Saidi and Rayyan to discuss further with Rizal and instructed the latter to bring them to see Tan Sri Desmond Lim ('Desmond').

A **[25]** Rizal stayed back at the accused's behest after Saidi and Rayyan left. She told Rizal to convey her wish to Saidi and Rayyan and reminded him to take them to meet Desmond to find the best method to receive Jepak's contribution. She told Rizal to increase the percentage offered to 15%.

B **[26]** Rizal met them on the same day at the Lygon Cafe. Rizal told them that the accused wanted a 15% contribution from the value of the project, which came up to RM187.5m. Saidi then asked Rizal to request the accused to reduce it from 10% to 12%, as 15% was too high. Rizal said he would ask the accused and revert. Rizal called Rayyan the following day and said that the 15% cut was C final and told Rayyan to convey his message to Saidi.

[27] It was eventually agreed that they would pay in stages, namely 15% from each progress payment received until it reaches RM187.5m. Saidi D also agreed to pay Rizal RM20m for his part.

[28] A few weeks later, Rizal brought Saidi to meet Desmond at the latter's office at the Pavilion Kuala Lumpur. According to Rizal, Desmond and his wife, Puan Sri Cindy are very close to both Najib and the accused. Desmond's E acquaintance, Lawrence Tee, also joined them. Rizal told Desmond that the accused had asked him to arrange for this meeting. He then briefed Desmond and Lawrence on the project. Rizal also told Desmond of Jepak's intention to contribute to the accused. Desmond instructed Lawrence to attend to Rizal and Saidi. Rizal subsequently related to the accused of what had transpired.

F **[29]** Saidi and Lawrence adjourned to a cafe at the Pavilion mall. They were met by Rayyan there. Saidi and Rayyan briefed Lawrence on the project's background. Lawrence suggested a consultancy agreement between Jepak and another company that would act as Jepak's consultant. They met a few times G between February 2016 and December 2016 to discuss the consultancy agreement. Rizal would occasionally join them.

[30] A consultancy agreement was eventually drawn up between Jepak and a Taiwanese company called Lucky Victory Limited ('Lucky'). It was a four-page H agreement. Under this agreement, Lucky was to provide consultancy services to Jepak to procure the project from the Ministry of Education. Jepak was to pay Lucky a fee of 15% of the RM1.25 billion for the services rendered and that the payment would be staggered over five years. The percentage was reduced to 12% as Saidi said they could not afford the 15% asked by the accused. Saidi I had signed the agreement and gave the signed copies to Rayyan and Lawrence. However, this amendment was short-lived as Rizal told Saidi and Rayyan to stick to the 15% asked by the accused. Saidi subsequently amended as directed and signed the agreement in Lawrence's presence. Rayyan had signed as a witness. Lawrence had given Rayyan a copy of the agreement and kept one for

Rizal, who never collected it from Lawrence. Lucky had never provided Jepak with any consultancy services nor provided Jepak with any assistance. This agreement, however, could not be traced and produced as an exhibit during the trial.

[31] The Education Ministry's technical team eventually suggested three options for Mahdzir's consideration in May 2016. Mahdzir favoured the second option, which was to appoint Jepak to pioneer the project first for the 16 schools in the Mukah/Daro district and 12 schools in the Baram district that Jepak was contracted to under the Genset Diesel project. Mahdzir opined that this would enable the Ministry to gauge Jepak's initial capability to undertake the project for the more than 300 schools. In any event, this proposal needed the Finance Ministry's approval. Saidi and Rayyan were not pleased. They had hoped for Mahdzir to instruct the Education Ministry to issue a letter of award directly to Jepak for the project.

[32] What ensued next was Rizal's involvement. Mahdzir deemed Rizal as the accused's special officer. He had seen Rizal with the accused in many official functions.

[33] Rizal called Mahdzir on his mobile phone a day or two after 31 May 2016. Rizal questioned Mahdzir's decision as Najib had already instructed him to terminate the Genset Diesel project and award the project to Jepak. Rizal also remarked that 'Mem' was also in the loop about Jepak's proposal. Mahdzir said he had merely adhered to the rules and followed the technical committee's recommendation. To Mahdzir, the 'Mem' that Rizal alluded to was the accused and that the phone call was made at the accused's behest. There were further meetings between Mahdzir, Saidi and Rayyan where the duo voiced their dissatisfaction with Mahdzir. However, Mahdzir refused to deviate from the course of action taken by his Ministry.

[34] To help Jepak with its impasse with the Ministry's officials, Rizal suggested to the accused that she speak to Madinah in order to expedite Jepak's application. He suggested that this be done at a function of an organisation called Permata, where Madinah would be present, as she was also a board member. The accused was the patron of Permata. Permata's function was organised by the accused at Najib's official residence. Rizal had approached Madinah first at the function. He had asked Madinah about the project's status and told her to look into the project. Like Mahdzir, Madinah also saw Rizal as the accused's special officer as he was often with the accused at official functions. At the end of the function, Madinah accosted the accused to her car. The accused told Madinah 'You tengok sikit projek solar Jepak. Cepatkan sikit' (Look into the Jepak solar project. Expedite it). Madinah was shocked that the accused had shown an interest in the project and wondered what her interest

A was. Nevertheless, she understood the accused's request to expedite the process for the project so that it would be awarded to Jepak. Madinah took the accused's request seriously as she saw the accused, being the Prime Minister's wife, to be highly influential and could influence Najib. Madinah was worried that the accused would complain to Najib if she did not adhere to her request since Najib had also issued instructions for the project to replace the Genset Diesel project.

[35] Rizal would frequently update the accused on the progress or the lack of progress encountered by Jepak regarding the project, as the accused would often ask him about the project's progress, and the payments promised to her. He had also conveyed Saidi and Rayyan's frustrations with Mahdzir's uncooperativeness. Rizal claimed that the accused was not pleased with Mahdzir.

[36] Then came the second instruction from Najib. Jepak had, through a letter dated 2 June 2016 to Najib, set out further details and proposals on the project. This letter was forwarded to Mahdzir through a letter from the Prime Minister's office dated 7 June 2016. Saidi delivered these letters to Mahdzir personally on 8 June 2016. Jepak's letter had Najib's minutes stating, 'Sila laksanakan seperti minit saya dulu' (Please execute according to my previous minutes). Saidi and Rayyan had managed to get Najib's minutes through Aazmey's help.

[37] Mahdzir was more intrigued when Rizal had called him previously. He then asked Saidi who was behind this project. Saidi told him that his team consisted of the accused, Rizal and Aazmey. Saidi wanted Mahdzir to minute his instructions on the letter instructing his Ministry to carry out Najib's instructions. Mahdzir relented and minuted the letter stating 'Setuju dilaksanakan seperti arahan YAB PM. Sila segerakan kertas untuk Kern. Kewangan dengan kadar segera' (Agree to implement as instructed by the Honourable PM. Please expedite the papers for the Finance Ministry as soon as possible). His minutes were addressed to Madinah. Saidi left Mahdzir's home with the letters. Saidi and Rayyan then personally gave these letters to Madinah on the same day. This was the first time that they met Madinah. They took the opportunity to ask Madinah to speed up the issuance of the letter of award.

[38] Mahdzir felt he had no choice but to approve the project after receiving Najib's second instructions. He had often received Najib's approval for companies to carry out projects through minutes throughout his tenure as the Education Minister. However, this was the first time Najib had issued two minutes giving approval and instructions.

[39] Madinah, too, was of the same view. Over the years at the Education Ministry, she had never seen Najib issuing a second minute to execute his first minute. She was also aware that Najib had never enquired or discussed with Mahdzir about the project before issuing the second minutes. She found it odd as she had always known Najib to be mindful of the costs and needs of any project and had often reminded the Secretary General of all ministries to ensure that the projects proposed by parties were carefully planned. She also found the haste of Najib's instructions extraordinary for a high-value and large-scale project without going through proper planning or discussion with the Education Ministry.

[40] Like Mahdzir, Madinah claimed Rizal, Saidi, and Rayyan had constantly pestered her on the project through telephone calls and messages. Rizal would always tell her that 'Mem' was following the project's progress keenly to justify his calls and instructions. Madinah also knew that 'Mem' was a reference to the accused.

[41] It was clear to Mahdzir and Madinah that they had no choice but to carry out Najib's instructions to proceed with Jepak's project. The relevant paperwork was rushed to appoint Jepak through a direct appointment. It was not easy as Jepak's proposal had many shortcomings. The Ministry was also concerned that it had to terminate the contracts of the Genset Diesel contractors. Nevertheless, the Education Ministry proceeded to submit the proposal for the project to the Ministry of Finance for its approval.

[42] Mahdzir had the opportunity to speak to Najib sometime in June 2016. He tried to convince Najib to use an open tender for the project and not through direct negotiations with Jepak. Najib however was adamant and told Mahdzir to carry out his instructions.

[43] Mahdzir also related an incident between him and the accused at a breaking of fast function held on 8 June 2016 at Najib's residence. As Mahdzir was bidding farewell to the accused, she told him, 'You tengok la projek solar Cikgu Aazmey, Cepatkan sikit' (Look into Cikgu Aazmey's solar project. Speed it up). That brief instructions by the accused confirmed to Mahdzir what Saidi had told him, that the accused was part of Saidi's team for the project.

[44] Mahdzir took the accused's instructions seriously. Like Madinah, he also viewed the accused as the Prime Minister's wife, as an influential and authoritative person. To Mahdzir, she had asserted her authoritativeness by brazenly instructing him, a Minister, to look into and speed up the process for the project.

[45] Rizal had arranged for Saidi and Rayyan to meet with Dato' Othman Semail (PW7) ('Othman'), who was the Secretary of the Government's Procurement Department in the Ministry of Finance. Before this meeting, Saidi had forwarded to Najib through Aazmey, Jepak's letter dated 23 July 2016 requesting that the Education Ministry be authorised to negotiate directly with Jepak. The letter was returned with Najib's minutes stating, 'Ybhg Datuk Othman, Bersetuju diluluskan Rundingan Terus berdasarkan penjimatan kos. Sila uruskan segera' (Honourable Datuk Othman, agree to approve direct negotiations to save costs. Please arrange immediately). Emboldened with Najib's minutes, Saidi and Rayyan met with Othman at the latter's office in August 2016 and gave him Jepak's letter with Najib's minutes. Saidi urged Othman to hasten the approval. The latter was unimpressed. Othman had chastised the duo and made known his disapproval of their methods. He also told them he serves the public and not politicians.

[46] Saidi and Rayyan were taken aback and aired their grouses to Rizal, who then related the incident to the accused. Rizal also told the accused that Othman did not seem to respect her as the Prime Minister's spouse. A few days later, the accused told Rizal that 'Aku dah cakap dengan laki aku dah'. (I have already told my husband).

[47] A few days later, the Finance Ministry approved the Education Ministry's request to negotiate directly with Jepak and proceed with the project. The Education Ministry's letter of intent dated 29 August 2016 was issued to Jepak. Saidi and Rayyan were still not pleased as they had wanted a letter of award. They expressed their dissatisfaction to Mahdzir who merely retorted that the Education Ministry's procedure had to be adhered to.

[48] Saidi and Rayyan met up with Rizal again on 1 September 2016. They requested that Rizal seek the accused's assistance in getting the letter of award issued. Rizal told them that Madinah was due to retire the next day and that he would get the accused's help to get Madinah to write to the Finance Ministry and request that a letter of award be issued to Jepak. Madinah did that through her letter dated 2 September 2016, but the letter of award was still not issued due to budget constraints.

[49] Saidi and Rayyan had approached Aazmey with Jepak's letter to Najib dated 8 November 2016. Jepak had, in that letter, requested that Najib direct Mahdzir issue a letter of award to it. What followed next was another letter from Najib to Mahdzir. The letter dated 8 November 2016 from the Prime Minister's office had Jepak's letter to Najib dated 6 November 2016. Again Najib's minutes appeared on Jepak's letter, this time with the notation 'Sila

keluarkan SST (LOA) untuk projek berdasarkan surat Jepak Holding dengan segera' (Please issue a letter of award for the project based on Jepak Holding's letter immediately).

[50] Mahdzir felt pressured. He had the opportunity to meet Najib between 1pm and 2pm on 9 November 2016, in the Malaysian Cabinet's meeting room hallway. He had advised Najib to defer the issuance of the letter of award to Jepak as there were a few requirements that Jepak and the Education Ministry had to fulfil. Mahdzir also complained of Saidi and Rayyan's constant harassment and disrespectful attitude toward him as a Minister. Najib ignored his plea and instructed him to follow his instructions immediately. Mahdzir felt that he had no choice but to adhere.

[51] The Ministry's letter of award dated 10 November 2016 was finally issued, awarding Jepak the project for RM1.25 billion. This still did not seem to appease Saidi and Rayyan, as they came to see Mahdzir on the same day with another complaint. They were not happy with cl 11, which gave the Ministry the right to terminate the contract and reduce the number of schools under the project once they were connected to the national electricity grid. Mahdzir did not relent initially as his Ministry set the terms. Rayyan then called Rizal on his mobile phone and passed it to Mahdzir. Rizal told Mahdzir to remove the clause and not make it difficult anymore. Rizal reminded Mahdzir that 'Mem' is aware of the project and that he is to acquiesce to Jepak's request.

[52] Mahdzir relented. That phone call from Rizal on the accused's behalf made him realise that he had no choice but to do as told. He then gave instructions for the letter of award to be amended. Saidi came to see him that night with the amended letter of award for Mahdzir to sign. He left after the deed was done. With the letter of award signed, Jepak had successfully been appointed by the Education Ministry as the contractor for the project involving 369 rural schools in the interior of Sarawak for RM1.25 billion (RM1.35 billion with tax).

[53] According to Rizal, the accused had often reminded him to follow up on Saidi's promise to her. She had once told Rizal to increase the percentage to 17% after finding out that the letter of award had been issued to Jepak. Rizal, however, managed to convince her that 17% would be too high as it would eat into Jepak's revenue. The accused had nevertheless instructed Rizal to follow up on the payments due to her. Rizal did as told and told Saidi to start making payment to the accused as promised and reminded him of the assistance that the accused had given him.

[54] Saidi took heed of Rizal's reminder. He took steps to obtain an RM16m loan for Jepak from a company called Builtamont International Sdn Bhd in

December 2016. Saidi transferred RM6m from Jepak's bank account to his bank account on 20 December 2016. This was verified by Wong Pin (PW13), the Manager of CIMB Bank's Bintulu Sentral branch, where Jepak's account was held. Saidi then informed Rizal that he was prepared to pay RM5m first as part-payment towards the RM37.5m that he is supposed to pay annually over five years in respect of the RM187.5m payment promised to the accused. Rizal had instructed him to hand Lawrence the RM5m in cash at the Pavilion.

[55] Saidi planned to withdraw RM5m cash from his bank on 20 December 2016 and deliver the cash to Lawrence as instructed. He and his driver set out to buy two bags first. Saidi had also asked a friend named Razak bin Othman (PW8) ('Razak') to accompany him to the Medan Tuanku Maybank branch. Saidi withdrew RM5m cash through a cash cheque (Maybank Islamic Cheque No 198979 dated 20 December 2016). This was verified by Low Ai Lin (PW11), the Assistant Manager, and Azimah bt Aziz (PW3) the Chief Cashier, of Maybank's Medan Tuanku branch, where Saidi had his account. After verifying the cash received, Razak and Saidi split the amount in half and put RM2.5m cash into each bag.

[56] Rizal had arranged for an officer attached to the police's special force unit, 'Unit Tindak Khas' ('UTK'), to accompany Saidi from the bank. Saidi, his driver, Razak and the UTK officer then set off in Saidi's car to Lawrence's office at the Pavilion. They met up with Rizal and his acquaintance named Dato' Ahmed Farriq bin Zainul Abidin (PW2) ('Ahmed') at the lobby of the Pavilion office tower. They then went to Lawrence's office with the two bags in tow. Razak and the UTK officer put the two bags in the guest room in Lawrence's office while Saidi went on to meet Rizal and Lawrence. Saidi told Rizal and Lawrence that the two bags contained RM5m in cash. Lawrence, however, refused to accept the money as Lucky did not authorise him. Rizal then called the accused on his mobile phone and was instructed to deliver the cash to the Seri Perdana complex (the Prime Minister's official residence) in Putrajaya. Saidi then got Razak and the UTK officer to put the two bags into Rizal's car. Rizal and Ahmed then made their way to Seri Perdana in Rizal's car. The UTK officer sat in Rizal's car to accompany them.

[57] Rizal had confided to Ahmed that the two bags contained cash and were meant for 'Mem'. Ahmed knew that the 'Mem' that Rizal referred to was the accused, as he had known Rizal for quite some time. He also knew that Rizal was the accused's special officer and that he had always referred to the accused as 'Mem'.

[58] During the journey, Ahmed whispered to Rizal his concern that it would not be a good idea for the UTK officer to accompany them to Seri Perdana as he would then know whom the cash was meant for. Rizal agreed and

got the UTK officer to alight at the Prime Minister's office in Putrajaya. Rizal then got the accused's police outrider to escort them to Seri Perdana. Rizal had, upon arriving at Seri Perdana, instructed two of the accused's butlers in uniform to carry the bags into the house. Ahmed also witnessed the two butlers pulling the bags into the residence. Rizal told Ahmed to stay in the car as he wanted to meet 'Mem'. The accused had, upon seeing Rizal and the two bags, asked him 'Berapa?' (How much), to which Rizal replied, 'Lima' (Five). Rizal came out about 30 minutes without the bags and returned to his car. He told Ahmed that it was settled. They both left Seri Perdana in Rizal's car.

[59] A few days later, Rizal asked the accused whether she was satisfied with the amount given by Saidi. She lamented that she needed a lot more for political purposes. She also remarked, 'Pandai-pandailah dia orang jaga you' (They should be smart enough to take care of you). Rizal decided to raise his stake from RM20m to RM25m, which Saidi readily agreed to. He gave Rizal RM500,000 cash on 23 December 2016 at Rizal's residence.

[60] Mahdzir received a phone call from the accused on 22 December 2016. The accused told him to follow Najib's instructions in his minutes and that she did not want Mahdzir to delay the project further. That call convinced Mahdzir further that the accused was instrumental in helping Saidi to get the project.

[61] The next stage was for the contract to be finalised and the advance payment and claims by Jepak. Mahdzir had prohibited his Ministry from making payments to Jepak until it presented the development plan. This was a problem for Jepak as it did not have the funds.

[62] Madinah's tenure as the Secretary-General ended in September 2016. She was succeeded by Dato' Sri Alias bin Ahmed (PW12) ('Alias'). Jepak had, through a letter to Najib dated 5 January 2017, requested, amongst others, for Alias to be given the authority to sign, make decisions, assess and approve the letter of award. Jepak, in this letter, brazenly stated that Alias would be more likely to abide by Najib's minutes. Najib seemed to have agreed with all of Jepak's proposals. His minutes on the letter stated 'Bersetuju dilaksanakan dengan segera' (Agree to implement immediately).

[63] Jepak had, through its letter to Alias dated 23 February 2017, requested an advance payment of RM130m. The Finance Ministry rejected Jepak's request as it did not fulfil the Ministry's criteria. Saidi then sought Rizal's help to speak to Alias and Mahdzir. Jepak wrote yet another letter to Najib dated 21 April 2017, requesting Najib's approval as he was then also the Finance Minister. Saidi again utilised Aazmey to bring the letter to Najib's attention. Najib approved the request and as usual appended his minutes on the letter

A stating 'Diluluskan permohonan ini. Sila keluarkan pendahuluan dengan segera' (Application approved. Please issue the advance immediately).

[64] There were many problems concerning the interim and progressive payments for Jepak as the company did not fulfil its obligations, such as B submitting the documents required. Saidi was under pressure since Rizal kept reminding him of his obligation to make the political contribution to the accused as promised.

[65] At this point, Rizal had approached Alias and told Alias to expedite the C interim or progressive payments to Jepak. Alias also knew Rizal as the accused's special officer. Like Mahdzir and Madinah, Alias deemed Rizal's instructions to have come from the accused and was to be taken seriously. Rizal had also suggested to the accused to speak to Alias.

D **[66]** A few weeks later, Alias received a call from the accused's officer, Dato' Seri Azizah Abod. She told him that the accused wanted to be appraised of the project after the upcoming Permata Board of Trustees meeting. Alias too was a board member of Permata. Alias did meet the accused after that meeting. Alias E explained the issues when she asked about the progress of the advance payment to Jepak. The accused then asked him when the contract would be executed and to expedite it, as payments could not be made if the contract was not signed. Like Mahdzir and Madinah, Alias too took the accused's instructions seriously.

F **[67]** In May 2017, Najib instructed Mahdzir to delegate the authority to sign the official contract to Alias. This instruction was given through yet another minute on Jepak's letter dated 24 May 2017, which was attached to a letter from the Prime Minister's office dated 25 May 2017. Mahdzir did as G instructed.

[68] The contract for the project between the Education Ministry and Jepak was eventually signed on 20 June 2017.

H **[69]** Saidi went to see Mahdzir at his office sometime in July 2017. Saidi told him that Jepak had difficulties obtaining payments for the interim work it had done since January 2017. He claimed that the Education Ministry's finance department had refused to make the payment due to incomplete documentation. Mahdzir told him to follow the procedure. Saidi was not I amused and belittled Mahdzir. He told Mahdzir that he would complain to Najib, Rizal and the accused.

[70] Rizal came to see Mahdzir two days later. He told Mahdzir to assist Jepak's payment. Mahdzir told Rizal that the Finance Ministry would need to

give its approval before any payment can be made. Rizal then told Mahdzir to write a letter seeking exemption from Najib, who was also the Finance Minister then. Mahdzir did as instructed and issued the letter dated 19 July 2017 to Najib seeking exemption for incomplete documents, such as the Finance Ministry's approval for the project's costs, to enable the Education Ministry to pay Jepak.

[71] Mahdzir handed the letter personally to Najib on 19 July 2017 after a cabinet meeting. In approving the request, Najib wrote his minutes on the letter stating, 'Bersetuju diberi pengecualian khas seperti dipohon. Sila uruskan' (Agree to give special exemption as requested. Please arrange). Mahdzir forwarded the letter to Alias. The Finance Ministry, through its letter to Alias dated 31 July 2017, instructed the Ministry to make the interim payment to Jepak within 24 hours. Jepak received RM63m.

[72] Having received payment, Saidi instructed Rayyan to ask Rizal for a meeting with the accused, as he wanted to make payment as pledged. He also wanted the accused's help getting Najib's minutes for another project he had in mind for the Education Ministry.

[73] Rizal arranged for Saidi and Rayyan to meet the accused on 7 September 2017 at her house at Jalan Langgak Duta. On the day of the meeting, Saidi had arranged to withdraw RM1.5m cash from his bank account through a cash cheque (Maybank Islamic Cheque No 169589). This was again verified by Low Ai Lin (PW11) and Azimah bt Aziz (PW3). This time around, only his driver Shamsul accompanied him. He and Shamsul put the cash into two knapsacks and left for the accused's house. Rayyan went on his own.

[74] Upon reaching the accused's house, Shamsul put the two knapsacks in the living room. He then went to wait in the car, while Saidi and Rayyan joined Rizal in the living room. Rayyan took a video and some pictures with his mobile phone while waiting. The video and photos have been tendered as exhibits.

[75] Saidi told the accused that he brought the money as promised and would pay the rest based on the progressive payments received. The accused merely nodded her head and said, 'Hmmm'. Saidi and Rayyan then asked the accused's help to get Najib's minutes to support their proposal for a water-well project for the Education Ministry. The accused declined and told them to find other means to meet Najib. The meet-up was brief and did not last more than five minutes. Rizal saw the accused directing her butler to bring the two knapsacks to her upstairs room.

[76] Part of the Malaysian Anti-Corruption Commission's ('MACC') investigations included taking Saidi, Shamsul and Rayyan to the accused's house at Langgak Duta. This was done on 2 November 2018. The trio were taken into the house in turn and separately by Rekhraj Singh a/l Jaswant (PW15), to ensure the independence of evidence. Each of them was asked to show the living room, where the two knapsacks were placed, and where the accused, Saidi and Rayyan, were seated when they met on 7 September 2017. Photographs were taken, and a sketch plan was made based on the trio's descriptions by two other MACC officers, Mohd Redzuan bin Othaman ('PW2') and Muhammad Na'im bin Madmod ('PW14'), respectively. During the trial, the trio and MACC officers tendered and elaborated these photographs and sketch plans. The trio had also marked on the photographs where everyone was seated and where the two knapsacks were placed.

[77] Rizal had described the accused as a capable and intelligent person and that she was able to plan her strategies well in order to achieve what she wanted. He claimed that she was conscious of her image and was aware of the many negative publicities of her. She even got Rizal to form a team of cyber troopers to monitor the social media and counter any negative news about her. She gave him RM100,000 monthly for the upkeep of the cyber troopers. Rizal would constantly update her on her controversies and the steps he had taken to overcome them. He claimed that she would often summon him to her home at Langgak Duta for updates and had acquired her trust over the years. Rizal also claimed that the accused would assign him to confidential tasks such as collecting funds or contributions on her behalf from business personalities and contractors that wish to lobby for contracts from the government. They would meet her to foster a close relationship so that she could help convince Najib to give them contracts. These funds or contributions came in many forms, including cash in the guise of 'political donations'. Rizal claimed that over the years, he had garnered respect from politicians, civil servants and businessmen as they saw him as someone who had the accused's trust. Furthermore, working in the Prime Minister's office meant that he was at the 'centre of power' and was close to Najib and the accused.

[78] Rizal also claimed that the accused influenced the government agencies and civil servants, who would often accede to her demands. The civil servants according to Rizal would do their utmost to please her. Rizal claimed that the civil servants fear her as she is fierce and could influence Najib to transfer them or simply put them in 'cold storage' should they dare to oppose or disobey her instructions.

THE COURT'S DUTY AT THE END OF THE PROSECUTION'S CASE

[79] The court's duty at the end of the prosecution's case is to conclude whether the prosecution has made out a prima facie case against the accused (s 180(1) of the Criminal Procedure Code ('the CPC')). The accused will be called to enter her defence if a prima facie case has been proven, for she would otherwise be entitled to an acquittal (s 180(2) and (3) of the CPC).

[80] The prosecution bears the legal burden of proving the charges against the accused beyond a reasonable doubt. The prosecution also bears the burden to adduce sufficient evidence to prove every single element of the offence alleged in order to establish a prima facie case, which if not rebutted or unexplained, will result in a conviction (s 180(4) CPC, *Balachandran v Public Prosecutor*).

[81] Lord Denning in *Miller v Minister of Pensions* [1947] 2 All ER 372 at p 372 elucidated the concept of reasonable doubt:

> It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice.

[82] The court will also subject the prosecution's evidence to a maximum evaluation (*Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393; [2005] 6 AMR 203 (FC)). Any inference favourable to the accused must be given for her benefit should there be more than one inference (*Liew Chee Hong v Public Prosecutor* [2007] 7 MLJ 699 (CA)).

[83] The fundamental task of a trial judge at the end of the prosecution's case is to ask himself, whether he is prepared to convict the accused, should the accused opts to remain silent if the defence is called. The accused should be acquitted if the answer is no, as it would mean that no prima facie case has been made out. This approach was set out by the Court of Appeal in *Looi Kow Chai & Anor v Public Prosecutor* [2003] 2 MLJ 65 at p 81; [2003] 1 CLJ 734 at p 752 (CA):

> It therefore follows that there is only one exercise that a judge sitting alone under s 180 of the Code has to undertake at the close of the prosecution case. He must subject the prosecution evidence to maximum evaluation and ask himself the question: If I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution case? If the answer is in the negative then no prima facie case has

been made out and the accused would be entitled to an acquittal.

[84] I will now set out my findings on the prosecution's case.

FINDINGS OF THE PROSECUTION'S CASE

[85] All three charges levelled against the accused are in respect of offences committed under s 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act 2009'), which reads as follows:

> 16 Offence of accepting gratification
>
> *Any person who by himself, or by or in conjunction with any other person —*
>
> (a) *corruptly solicits or receives or agrees to receive for himself or for any other person*; or
>
> (b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person,
>
> *any gratification as an inducement to or a reward for, or otherwise on account of —*
>
> (A) *any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place*; or
>
> (B) any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned,
>
> *commits an offence*. (Emphasis added.)

Credibility of witnesses

[86] Of all 23 witnesses, there of them were material witnesses, namely Rizal, Saidi and Rayyan. They were pivotal to the case. Rizal as stated earlier was initially charged simultaneously with the accused, but was subsequently discharged and acquitted after the prosecution dropped the charges against him. These three witnesses were complicit in the corrupt dealings with the accused vis a vis the project. They are however not deemed as accomplices by virtue of s 52(1)(a) of the MACC Act 2009, which states as follows:

> Evidence of accomplice and agent provocateur
>
> (1) Notwithstanding any written law or rule of law to the contrary, in any proceedings against any person for an offence under this Act —
>
> (a) no witness shall be regarded as an accomplice by reason only of such witness having —
>
> (i) accepted, received, obtained, solicited, agreed to accept or receive, or attempted to obtain any gratification from any person;
>
> (ii) given, promised, offered or agreed to give any gratification; or

(iii) been in any manner concerned in the commission of such offence or having knowledge of the commission of the offence;

(b) no agent provocateur, whether he is an officer of the commission or not, shall be presumed to be unworthy of credit by reason only of his having attempted to commit, or to abet, having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person; and (c) any statement, whether oral or written, made to an agent provocateur by such person shall be admissible as evidence at his trial.

(2) Notwithstanding any written law or rule of law to the contrary, a conviction for any offence under this Act solely on the uncorroborated evidence of any accomplice or agent provocateur shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

[87] It is therefore settled that Rizal, Saidi and Rayyan are not deemed as accomplices under s 51(1)(a). Section 52(2) further states that any conviction for an offence under the MACC Act 2009 based on the uncorroborated evidence of any accomplice shall not be deemed illegal and that any conviction shall not be set aside even if the court failed to cite in its judgment the need to warn itself of the danger of convicting on such evidence.

[88] I am nevertheless reminded that although s 52 of the MACC Act 2009 has abrogated the need for corroboration, their evidence and that of any witnesses need to be credible and, where necessary corroborated in order to be found credible, be it based on the testimonies of other witnesses or the evidence presented by the prosecution. Corroboration is '... nothing other than evidence which confirms or supports or strengthens other evidence It is, in short, evidence which renders other evidence more probable' (*Deputy Public Prosecutor v Kilbourne* [1973] AC 729). I am wary that the evidences of Rizal, Saidi and Rayyan in particular need to be scrutinised carefully as they were complicit with the crimes alleged against the accused. It is necessary that their evidence needs to pass the test of credibility.

[89] The Federal Court's judgment in *Dato' Seri Anwar bin Ibrahim v Public Prosecutor and another appeal* [2015] 2 MLJ 293; [2015] 2 CLJ 145 (FC) on the test for accepting or rejecting the evidence of witnesses is germane:

First the law in *Dato' Seri Anwar bin Ibrahim v Public Prosecutor* [2002] 3 MLJ 193; [2002] 3 CLJ 457, Haidar Mohd Noor FCJ (as he then was), quoted the decision of the trial judge in that case with approval and reiterated the test for either accepting or rejecting the evidence of a witness, as follows:

The Privy Council has stated that the real tests for either accepting or rejecting the evidence of a witness are how consistent the story is with itself, how it stands the test of cross-examination, and how far it fits in with the rest of the evidence and the circumstances of the case (see *Bhojraj v Sitaram* AIR [1936] PC 60). It must, however, be observed that being unshaken in cross-examination is not per se an all-sufficient acid test of credibility. The inherent probability of a fact in issue must be the prime consideration (see *Muniandy & Ors v Public Prosecutor* [1966] 1 MLJ 257; [1966] 1 LNS 110). It has been held that if a witness demonstrably tells lies, his evidence must be looked upon with suspicion and treated with caution, but to say that it should be entirely rejected would be to go too far (see *Khoon Chye Hin v Public Prosecutor* [1961] MLJ 105; [1961] 1 LNS 41). It has also been held that discrepancies and contradictions there will always be in a case. In considering them, what the court has to decide is whether they are of such a nature as to discredit the witness entirely and render the whole of his evidence worthless and untrustworthy (see *De Silva v Public Prosecutor* [1964] MLJ 81; [1964] 1 LNS 32). The Indian Supreme Court has pointed out that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments (see *Ugar v State of Bihar* AIR [1965] SC 277). It is useful to refer to *Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15; [1976] 1 LNS 184 where Raja Azlan Shah FJ (as His Highness then was) said at p 19:

> ... In my opinion, the discrepancies there will always be, because in the circumstances in which the events happened, every witness does not remember the same thing and he does not remember accurately every single thing that happened. The question is whether existence of certain discrepancies is sufficient to destroy their credibility. There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other.
>
> In the absence of any contradiction, however, and in the absence of any element of inherent improbability, the evidence of any witness, whether a police witness or not, who gives evidence on affirmation, should normally be accepted (see *Public Prosecutor v Mohamed Ali* [1962] MLJ 257; [1962] 1 LNS 99) ...

[90] I shall now address the charges following the sequence of events, which shall be in the order of the first, third and second charge.

The first charge

[91] The essence of the first charge is that the accused had through Rizal solicited RM187.5m from Saidi for herself as an inducement to help Jepak be awarded the project by the Education Ministry through direct negotiations. The prosecution will need to prove the following elements in order to prove the first charge:

(a) that the accused had through Rizal corruptly solicited from Saidi gratification for RM187.5m being 15% of the project's value; and

(b) that she had solicited the gratification as an inducement to assist Jepak in getting the project from the Education Ministry through direct negotiations.

[92] I will address the elements in consonant with the issues raised by the defence counsel.

Whether the accused corruptly solicited from Saidi through Rizal's gratification for RM187.5m

[93] To request or to ask for something is perhaps a euphemism of the word solicit, as the connotation to the word solicit is usually unflattering. Raja Azlan Shah's FJ (as His Highness then was) elucidation of the word solicit in *Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15 at p 20 (HC) is apposite:

> The word 'solicit' is a common English word, and it means, in its simplified form, 'to ask'. In various English dictionaries this simple meaning is given, but other similar words are also used to explain other meanings it possesses, such as 'to call for', 'to make request', 'to petition', 'to entreat', 'to persuade', 'to prefer a request' (see *Sweeney v Astle* [1923] NZLR 1198 at p 1202). Thus when a businessman advertises his goods, we say he is soliciting customers. He wants to sell his goods, and he solicits people to buy them. Again, such a businessman goes to a person whom he selects to try to induce him to buy, we say he is soliciting orders. To solicit then, means to ask for or invite offers. Thus to solicit an order for goods means merely to ask for or invite offers for the purchase of those goods. A statement therefore, the real and operative purpose of which is to induce somebody to make such offers, amounts to asking for or inviting such offers. But to constitute soliciting, the request or invitation must reach the person solicited.

[94] The prosecution contended that the accused's solicitation from Saidi was done through Rizal and done sometime between January and April 2016 at the Lygon Cafe. Rayyan, too was present. All three testified that they had met at the Lygon Cafe between January and April 2016 and that Rizal had told Saidi and Rayyan that the accused had wanted a 15% cut from the value of the project. This is a question of fact and, if proven, would satisfy the first element of the first charge.

[95] The prosecution contended that this meeting culminated from an earlier meeting between Saidi, Rayyan, Rizal and the accused sometime in January or February at the accused's home at Langgak Duta. This meeting was initiated by Rizal at the duo's request and agreed to by the accused. This was the first time that Saidi and Rayyan had met the accused, and it was at this meeting

that the duo informed the accused of the project and requested her help. Saidi then offered to make a political donation to Najib through the accused as a show of appreciation for Najib's minutes on Jepak's letter of proposal for the project. Saidi's political donation offer was 10% of the project's value. The accused claimed to have lamented UMNO's dire status and need for political funding. There was no express solicitation by the accused at this point. This meeting ended without any commitment made by the accused. Saidi and Rayyan left, but Rizal stayed back at the accused's behest. The accused then told Rizal to increase the percentage offered by Saidi to 15% and instructed Rizal to take the duo to meet Lawrence.

[96] The defence contended that it was a political donation offered by Saidi and Rayyan and that the accused never solicited anything from them at this meeting. The purpose of the political donation was twofold: (a) to show their appreciation for Najib's minutes on Jepak's letter of proposal; and (b) secondly, for Najib's political funds. It was also contended that the accused would have made a counter-offer if she was inclined to accept it. It was exhorted that the prosecution had failed to establish a prima facie case as Saidi offered a political donation to the accused.

[97] The facts raised by the defence are events before the alleged solicitation occurred. It is not an issue that Saidi and Rayyan had first met the accused at her home and that they had, in addition to asking for her assistance, offered to make a political donation. However, this fact is not the first charge's main ingredient. As I have stated, the facts before the event, which I might add, are relevant, as it led to the subsequent meeting at the Lygon Cafe between Saidi, Rayyan and Rizal, where the solicitation occurred.

[98] The critical issue is whether the accused had, through Rizal, solicited 15% of the contract value amounting to RM187.5m from Saidi. The determination of this issue rests largely on Rizal's testimony, which, if believed, would prove that the accused's solicitation was done through him.

[99] The act of solicitation need not be done by an accused directly as it can be done through an intermediary. This was emphasised by Raja Azlan Shah FJ (as His Highness then was) in the *Datuk Haji Harun bin Haji Idris (No 2)*'s case at p 20:

> Soliciting does not cease to be soliciting if it is received by the person solicited not from the person who solicits, but by other means of transmission or communication, such as a letter, circular, newspaper advertisement, telephone or message. To take the illustration further, *if the politician enlists the services of his subordinate or some third person or persons to do the act of soliciting for political donation that is nonetheless soliciting for the same by him. It is by the instrumentality of his subordinate or the third person that the act was done by him*. (Emphasis added.)

[100] The defence submitted that it was Rizal who suggested to Saidi and Rayyan prior to meeting the accused to start the negotiation at 10% and to stop at 15%, and that there is no evidence to suggest that it was the accused's idea or instructions to Rizal. I am unable to appreciate this line of argument as what Rizal suggested was again before the event. It was merely Rizal's suggestion then. What matters is whether the accused had instructed Rizal to solicit 15% from the duo after meeting Saidi and Rayyan at her home.

[101] The defence also submitted that Saidi had shown Jepak's letter that had Najib's minutes to the accused and that all the subsequent minutes that Jepak had obtained from Najib were Aazmey's efforts and not the accused's. I fail to see the relevancy of this line of argument as the first charge concerns solicitation by the accused.

[102] The defence laid many complaints against the prosecution's failure to charge Rizal, Saidi, Aazmey and Mahdzir for corruption and set out extensively the evidence led during the trial that purportedly implicates them. The defence, in particular, took issue with the prosecution's withdrawal of the charges Rizal initially faced and used Rizal as its witness against the accused. It was submitted that the public prosecutor had acted with male fide in exercising its discretionary power under art 145(3) of the Federal Constitution and making a deal with Rizal in return for the charges against him being withdrawn. Learned counsel for the defence referred to the case of *Public Prosecutor v WRP Asia Pacific Sdn Bhd* [2016] 11 MLJ 295; [2016] 1 LNS 760 (HC), where Zulkifli Bakar J opined that prosecutorial discretion must be acted in the interest of fairness to the public and accused and that the court would intervene if the evidence shows that the prosecution had exercised it with an improper motive, bad faith or mala fide. His Lordship referred to the Supreme Court of Canada's decision in *R v Power* [1994] 1 SCR 601, where the court held that the courts should intervene where there is evidence of the prosecutor's improper motive or bad faith.

With the greatest of respect, I am unable to agree with His Lordship's proposition. I am firstly uninclined to refer to *R v Power* simply because the Canadian jurisprudence is not in consonant with ours. It has been long established that the attorney general has the absolute discretion under art 145(3) of the Federal Constitution to institute, conduct or discontinue any proceedings for an offence, save for the Shariah, native and martial courts. The Federal Court in *Long bin Samat & Ors v Public Prosecutor* [1974] 2 MLJ 152 (FC) held:

> In our view, this clause from the supreme law clearly gives the attorney general very wide discretion over the control and direction of all criminal prosecutions. Not only may he institute and conduct any proceedings for an offence, he may also discontinue criminal proceedings that he has instituted, and the courts cannot

compel him to institute any criminal proceedings which he does not wish to institute or to go on with any criminal proceedings which he has decided to discontinue.

[103] The appellate court in *Lim Guan Eng v Public Prosecutor* [1998] 3 MLJ 14 at p 44; [1998] 3 CLJ 769 at p 784 (CA) stated per incuriam:

> To allege double standards against the public prosecutor in deciding which cases ought to be brought before the courts (which is the thrust of the words in the first paragraph of the second charge) amounts to denigrating and undermining the administration of criminal justice.

[104] I am aware of the recent Federal Court's decision in *Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors* [2021] 5 MLJ 209; [2021] 6 CLJ 199 (FC) where the apex court, although recognising that art 145(3) of the Federal Constitution, provides the public prosecutor with broad discretion on criminal offences, took the view that this discretion is amenable to judicial review, but only in appropriate, rare and exceptional cases. The application for review, however, would only apply to an applicant facing prosecution. That seems to be the avenue that an accused can seek. In any event, I fail to see how the failure of the prosecution to charge the others could exonerate the accused or provide her with a defence. Even if one assumes that the others were guilty of committing a crime, it does not exculpate the accused from an offence she may have committed. I would add that it is not uncommon for the prosecution to opt not to charge an accomplice and utilise him as a witness for the prosecution to strengthen its case.

[105] As I have stated earlier, there was no evidence of any solicitation by the accused through Rizal when the former first met Saidi and Rayyan at her home. Rizal, however, met both of them soon after they left. He met them with the accused's instructions to raise the percentage from the 10% offered by Saidi to 15%. I find it incredulous that Rizal would have the temerity to make the offer without the accused's instructions or knowledge. He had no clout to make a demand of such magnitude if not for the accused. I am mindful of the defence's contention that Rizal had acted on his accord and that he was not the accused's so-called special officer and had only boasted of his position for his benefit. I am, however, convinced that Rizal was the accused's trusted aide and had gained her trust, even if he was not officially her special officer. Although his official designation was a special officer to the Prime Minister's Office, he was assigned to the accused. He had been her aide for nine years since 2009. He would not have been able to secure a meeting between the duo and the accused if it was otherwise. Madinah had also related an occasion when Rizal introduced himself as the accused's special officer in the presence of the accused with no issues. Mahdzir, Alias and many others also deemed Rizal the accused's special officer.

[106] Rizal was subjected to a barrage of probing and, at most times, intimidating questions by learned counsel for the accused in cross-examination for several days. He was confident and adamant in stating that the accused had instructed him to solicit the 15% from the duo. That Saidi and Rayyan had also testified that Rizal had solicited the 15% from them on the accused's behalf also supports Rizal's testimony, mainly as it occurred soon after they met with the accused.

[107] Rizal is, without a doubt, the fulcrum of the prosecution's case against the accused. He does not stand to gain anything for himself by testifying against the accused, as he has already been acquitted and discharged from the charges that were levelled against him. I would have been warier if he was still facing the charges or if he was given a discharge not amounting to an acquittal, as it would have been more likely for him to exculpate himself and inculpate the accused for his benefit. In any event, this would not be the first case where the charges against a co-accused are withdrawn, and the co-accused ended up being the prosecution's witness. The case of *Mohd Khir bin Toyo v Public Prosecutor* [2015] 5 MLJ 429; [2015] 8 CLJ 769 (FC) is one such case where the prosecution's main witness was a crucial participant in the offence committed by the accused.

[108] I, therefore, find that the prosecution had successfully established the first and second elements of the first charge.

That she had solicited the gratification as an inducement to assist Jepak in getting the project through direct negotiations with the Education Ministry.

[109] Once the first elements has been established, the presumption under s 50(1) of the MACC Act 2009 arises against the accused. The section reads as follows:

> 50 Presumption in certain offences
>
> (1) *Where in any proceedings against any person for an offence under section 16*, 17, 18, 20, 21, 22 or 23 *it is proved that any gratification has been* received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, *solicited*, given or agreed to be given, promised, or offered, *by* or to *the accused*, *the gratification shall be presumed to have been corruptly* received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, *solicited*, given or agreed to be given, promised, or offered *as an inducement or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved*. (Emphasis added.)

[110] The presumption under s 50 of the MACC Act 2009 is not new, as its predecessors were s 14 of the Prevention of Corruption Act 1961 and s 42 of the Anti-Corruption Act 1997. This presumption is a presumption of law, and

is obligatory for the court to raise it once it is proven that the gratification was solicited by the accused (*Attan bin Abdul Gani v Public Prosecutor* [1970] 2 MLJ 143b (HC)).

[111] The second element of the charge is therefore fulfilled, in that the accused is presumed to have solicited the gratification as an inducement to assist Jepak in getting the project through direct negotiations with the Education Ministry, unless the contrary is proved pursuant to s 50. The burden on the accused to rebut the presumption is on a balance of probabilities (*Thavanathan a/l Subramaniam v Public Prosecutor* [1997] 2 MLJ 401 (SC) and *Noordin Sadakathullah & Ors v Public Prosecutor* [2019] 1 CLJ 748 (CA)).

The third charge

[112] The essence of the third charge is that the accused is charged with receiving RM5m from Saidi through Rizal at her official residence in Putrajaya on the 20 December 2016. The elements that the prosecution will need to prove are:

(a) that the accused had on the 20 December 2016 at Seri Perdana, received RM5m from Saidi; and

(b) that she had received the RM5m corruptly as a reward to help Jepak obtain the project through direct negotiations from the Education Ministry.

[113] Saidi had withdrawn RM5m in cash through a cash cheque on 20 December 2016 at the Medan Tuanku Maybank branch. This fact has been sufficiently established by the Maybank employees that attended to the withdrawal: (a) Low Ai Lin (PW11); (b) Azimah Aziz (PW3); and (c) also Saidi's friend, Razak, who accompanied him. The cash was then split into half and deposited into the two bags that Saidi had bought earlier in the morning. These facts are uncontroverted and similar to that of the first charge, save that it was Razak now who assisted Saidi with the cash.

[114] Saidi had withdrawn the cash pursuant to Rizal's instructions. This was after Rizal knew that the Education Minstry had issued a letter of award to Jepak for the project. Rizal had also informed the accused who then instructed Rizal to follow up with Saidi on the payments promised.

[115] Rizal had also instructed Saidi to hand over the RM5m to Lawrence at the Pavilion. A UTK officer arranged by Rizal accompanied Saidi and Razak in the car driven by Shamsul. The plan however did not materialise as Lawrence had refused to accept the cash claiming that he was unauthorised by Lucky. It was at this moment that Rizal called the accused and was then instructed to

send the cash to the accused's official residence at Seri Perdana complex. The two bags were then put into Rizal's car, who had his friend Ahmed and the UTK officer accompanying him in the car. The UTK officer was dropped off at the Prime Minister's office, leaving Rizal, Ahmed and the driver in the car. Rizal had alighted alone upon reaching Seri Perdana. He had told Ahmed that he was meeting the accused. Rizal instructed the accused's two butlers to carry the bag into the residence and met the accused. The latter enquired how much was in the bags and Rizal merely answered 'Five'. He then left.

[116] The defence contended that there is no evidence to prove that the accused had received the RM5m in cash on that day. The defence put up several arguments to justify its argument, which I shall deal with in turn.

[117] It was firstly argued that there is no evidence of the accused allegedly speaking to Rizal when he was at the Pavilion with Lawrence and the rest. The defence contended that there is no documentary evidence to substantiate Rizal's alleged phone call to the accused. It was even suggested to Lawrence during cross that it was possible that Rizal had pretended to call the accused when he was merely talking to himself.

[118] The defence also lay into the prosecution's failure to call the two butlers and the UTK officer, and submitted that there are material gaps in the prosecution's case. It was also submitted that the prosecution could have and should have produced Seri Perdana's CCTV recording to prove that the two butlers had indeed carried the two bags into the residence. The final point argued by the defence is that there are material contradictions on the type of vehicle used by Rizal, that is whether it was a Toyota Alphard or a Toyota Velfire. Rizal and Ahmed claimed that it was an Alphard where else Razak and Shamsul who were with Saidi claimed that it was a Velfire. Saidi was not sure whether it was a Velfire or Alphard. The defence contended that the identity of the vehicle is crucial and that the prosecution had therefore failed to establish a prima facie case due to its failure to identify with certainty the vehicle used by Rizal on that day. The defence submitted that the prosecution had merely relied on circumstantial evidence to prove its case that the accused had received RM5m in cash through Rizal on the 20 December 2016.

[119] There is no necessity to call the two butlers that handled the two bags. Rizal was the one who instructed the two butlers to carry the bags into the residence. Rizal testified that the two butlers were already waiting for him when he arrived, which suggests that the accused knew of Rizal's impending arrival. The accused knew of the two bags as she had asked Rizal how much was in the bags. Rizal's acquaintance Ahmed was in the car and saw the two butlers handling the bags. That is a crucial part of the evidence, as Ahmed, similar to Shamsul, is a disinterested witness. His testimony carries credible weight and

corroborates Rizal's testimony. I do not see how calling the two butlers could improve the prosecution's case any further, nor would adducing the CCTV recording make any difference. Rizal and Ahmed's direct testimonies are more than sufficient.

[120] It was suggested that Rizal had never handed over the two bags to the accused and kept them for himself. The fact that Saidi and Rayyan did not accompany Rizal to Seri Perdana meant they could never be sure that Rizal had forwarded the bags to the accused. It was also suggested that the main reason that Rizal had asked the UTK officer to alight his car before arriving at the Seri Perdana residence was that he did not want the officer to know what he did with the bags. The defence had, during cross-examination, questioned Rizal extensively as to why he had asked the UTK officer to alight when the main reason for the officer being there from the start was to provide security. It was suggested that Rizal did not want the officer to know that he had deviated from the original route so that he could go elsewhere with the bags.

[121] Rizal had explained why he got the UTK officer to alight his car. Although the initial plan was to have the officer accompany him for security, he changed his mind after being alerted by his friend Ahmed. The latter had, during the journey, whispered to Rizal and voiced his concern that the officer would know to whom the money was being delivered. Rizal was understandably concerned as he wanted to keep the accused's affair discreet, more so when the UTK officer was a policeman. His explanation was perfectly reasonable. He was, after all, the accused's special officer carrying out the task for her benefit, and it would be his duty to protect her interests. In any event, his security was ensured as a police outrider had accompanied his vehicle to Seri Perdana after the UTK officer alighted. The UTK officer was there at Rizal's behest, not the accused's. It would not have mattered if the UTK officer knew of Rizal diverting from Seri Perdana, if that was indeed the case, as the UTK officer was not part of the plan.

[122] I also find it incredulous to suggest that Rizal would have dared to abscond with the RM5m as he would have easily been found out. Saidi and Rayyan could verify with the accused later whether she had received the money, and the accused, too, could equally ask them why they had not been making the payments as promised. It would have been foolhardy for Rizal to steal the RM5m.

[123] As for the identity of the vehicle used by Rizal, I can understand why there was some confusion about whether it was an Alphard or a Velfire. Although both types of vehicles use the same engine and chassis, the facade of

both vehicles are almost similar and could be mistaken for one to be the other. It is an insignificant point as what mattered was that the bags were loaded into the vehicle used by Rizal.

[124] I also find that the payment of RM5m is in consonant with the first charge, in that the RM5m cash was part of the payments solicited.

[125] I, therefore, find that the prosecution has successfully proven the first element of the third charge, that the accused had received the RM5m from Saidi on 20 December 2016 at Seri Perdana. The rebuttable presumption under s 50(1) of the MACC Act 2009 arises against the accused regarding the second element of the third charge. The burden lies on the accused to rebut the presumption on a balance of probabilities.

The second charge

[126] l now come to the second charge. Here the accused is accused of corruptly receiving RM1.5m from Saidi on 7 September 2017 at her home at No 11, Jalan Langgak Duta, Taman Duta, Kuala Lumpur, as a reward for herself helping Jepak obtain the project from the Education Ministry through direct negotiations. The prosecution will need to prove the following elements:

(a) that the accused had on the 7 September 2017 at No 11, Jalan Langgak Duta, Taman Duta, Wilayah Persekutuan Kuala Lumpur, received from Saidi RM1.5m; and

(b) that she had received the RM1.5m corruptly as a reward to help Jepak be awarded the project through direct negotiations with the Education Ministry.

[127] Similar to the withdrawal of the RM5m in respect of the third charge, Saidi had also withdrawn the RM1.5m through a cash cheque from his bank account at the Medan Tuanku Maybank branch on 7 September 2017. This fact was confirmed by the same two bank officers that attended to Saidi's withdrawal of the RM5m, namely, Low Ai Lin (PW11) and Azimah bt Aziz (PW3). Saidi's driver, Shamsul, was also present when the cash was given to Saidi and he had, together with Saidi, inserted the cash into two knapsacks. It is also established that both Saidi and Rayyan were at the accused's home together with Rizal on the same day.

[128] The first issue raised by the defence is that Saidi had withdrawn the RM1.5m solely for his personal use and not for the accused. This was put to

Saidi during cross-examination, where Saidi had initially agreed with the suggestion. Saidi, however, reverted to his initial testimony in that the RM1.5m was withdrawn for the accused when crossed further. It was contended that these inconsistencies should render Saidi's testimony that he withdrew the RM1.5m for the accused unreliable.

[129] I had observed Saidi when he was on the witness stand. He was confident and unnerved even though the defence counsel constantly pressed him. He was the type that would call 'a spade a spade' and made no attempts to evade answering questions during cross-examination. Nevertheless, it is only human to be tired and confused, which may entail one giving inconsistent statements. That can happen to any witness, particularly when subjected to many hours or days of cross-examination, which was the case here. Even honest witnesses can make mistakes during testimony, for it is only human to err. Minor mistakes or discrepancies, however, do not render the whole testimony worthless, as the witness's evidence must be evaluated in its entirety.

[130] From my observation, Saidi was adamant that he had withdrawn the RM1.5m for the accused but did not quite understand the nature of questions peppered by the learned defence counsel. It was perfectly reasonable for him to, at a later stage, correct the misconception. It would be wrong to merely focus on one part of a witness's testimony without appreciating the whole evidence. This, in my opinion, was what happened. In any event, his stand that the RM1.5m was withdrawn to be given to the accused is sound for reasons I shall elaborate on later.

[131] The second issue raised by the defence is that the RM1.5m was never delivered to the accused. In raising this issue, the defence contended several arguments, which can be summarised as follows:

(a) the discrepancy by the prosecution's witnesses in giving the exact location of where the two knapsacks were placed;

(b) failure to prove that the two knapsacks were handed over to the accused physically; and

(c) the RM1.5m in the two knapsacks was never shown to the accused.

[132] It is not disputed that the accused had met the entourage on 7 September 2017 at her residence. However, the defence contended that the accused was unaware of the meeting and the condition she was in. She was dressed in sports attire and appeared tired from exercising. That she only met Saidi and Rayyan for a brief five minutes supports the defence's argument that she was not expecting guests, more so receiving the two knapsacks with the alleged RM1.5m cash.

[133] As for the location of the two knapsacks, the defence highlighted the discrepancy by the witnesses on where they were placed in the living room. Shamsul (Saidi's driver) claimed to have placed them on a green sofa. Saidi claimed that Shamsul had placed them on the floor next to the sofa. Rayyan said that Shamsul had placed them next to the sofa, and Rizal claimed to have seen Shamsul placing them in the living room.

[134] I fail to see how these discrepancies, which in my view are insignificant, can lend any credence to the defence's argument. The fact is that the two knapsacks were brought into the living room by Shamsul. Rizal, Saidi and Rayyan too had confirmed this fact. It is not a figment of the imagination and does not really matter where they were placed. The photos and videos taken by Rayyan in the living room before the accused came down show that the two knapsacks were there.

[135] There is also the MACC's investigations where the officer, Rekhraj Singh (PW15), took Saidi, Shamsul and Rayyan into the accused's house separately to ensure independency of evidence. Each of them was asked to show the living room, where the two knapsacks were placed, and where the accused, Saidi and Rayyan, were seated when they met the accused on 7 September 2017. A sketch plan was also made based on the trio's descriptions, and they also marked on the photographs tendered where everyone was seated and where the two knapsacks were placed. Their testimonies were consistent.

[136] The defence contended that the knapsacks were never handed over to the accused physically, nor were they opened to show their contents, which meant that the accused did not know of the contents nor had she received the RM1.5m. It is submitted that there is no evidence to prove that she had corruptly received RM1.5m, as alleged in the second charge.

[137] It is vital to establish whether the RM1.5m was indeed in the two knapsacks. That Saidi had withdrawn RM1.5m in cash from the bank in person is a fact that was witnessed and confirmed by the two Maybank employees and Shamsul. The fact also shows that both Saidi and Shamsul inserted the cash into the two knapsacks and then placed them in Saidi's car. Saidi and Shamsul then drove to the accused's residence with the two knapsacks. Shamsul then unloaded the two knapsacks and put them in the living room. These bags were always in the custody of Saidi and Shamsul until they arrived in the accused's living room. The photos taken by Rayyan of the accused's living room also confirm that the two knapsacks were placed there and that Saidi, Rayyan and Rizal were all there. Therefore, the chain of movement pertaining to the RM1.5m has been sufficiently established. I can

therefore conclude that there was RM1.5m in these two knapsacks. This negates the defence's contention that Saidi had withdrawn RM1.5m for himself.

[138] Would it matter that the accused never saw the money in the two knapsacks? Saidi testified that he had told the accused that he brought the money as promised and would pay the rest based on the progressive payments received. The accused merely nodded her head and said, 'Hmmm'. This response indicated acknowledgement and acceptance on her part. Rizal also saw and heard the accused directing her butler to take the two knapsacks and put them in her room. I can only conclude that the accused would have been able to inspect the contents of the two knapsacks and then count them, which would amount to RM1.5m. Now, if she had never intended to accept them, one would expect her to do several things: (a) telling Saidi and Rayyan to leave; (b) complaining to Rizal; (c) lodging a police report; and (d) or returning the monies to Saidi. None of these happened. The accused's response was most telling. She nodded and said, 'Hmmm', when Saidi told her that he had brought the money as promised and would pay the rest based on the progressive payments received. Her response proves that she had accepted the cash, and similar to the third charge, I find that this is in consonant with the first charge, in that the RM1.5m cash was part of the payments solicited.

[139] Saidi and Rayyan had, during the brief meeting, sought to ask the accused's help to get Najib's minutes to support their proposal for a water-well project for the Education Ministry is immaterial. I am not surprised that she declined to help them, as her only focus was the project.

[140] The defence contended that the prosecution should have called the accused's butlers to substantiate Rizal's contention that he saw and heard the accused directing them to take the knapsacks to her room and that an adverse inference should be drawn for this failure. There is no necessity for the butlers to be called and testify, as Rizal's testimony was sufficient. After all, it was not 'the butlers who did it'. There is no necessity for the prosecution to call all witnesses to complete its narrative of the prosecution's case. Raja Azlan Shah FJ (as His Highness then was) held in *Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15 at p 28 (HC):

> Without going into detail, it is sufficient for me to say that an adverse inference against the prosecution can be drawn only if it withholds certain evidence and nor merely on account of its failure to call certain evidence. In my view, it's a misconception to speak of the prosecution as having a duty to the accused to call all witnesses who will testify as to events giving rise to the offence charged. The misconception has arisen from treating some observations in the decided cases, which have been made with a view of offering guidelines to the prosecution in how

to approach its task, as the prescription of an inflexible duty to call all material witnesses, subject to certain exceptions or to special circumstances.

[141] Saidi, Rayyan and Rizal left the accused's home without the two knapsacks. This fact was also confirmed by Shamsul. Unlike the rest, Shamsul had no part to play in the project and its dealings. He was no longer working as Saidi's driver during the trial. He had nothing to gain from the case. He is quintessentially a disinterested witness. His testimony adds credible weight to the prosecution's case.

[142] I therefore find that the prosecution has successfully proven the first element of the second charge, in that the accused had received RM1.5m from Saidi. The rebuttable presumption under s 50(1) of the MACC Act 2009 has as such arisen against the accused in respect of the second element, in that she had received the RM1.5m corruptly as a reward to help Jepak obtain the project through direct negotiations with the Education Ministry. The burden therefore lies on the accused to rebut on a balance of probabilities.

The investigation officer

[143] Noornabilah bt Mohd Aziman (PW23) ('IO') from the Malaysian Anti-Corruption Commission was assigned as the investigation officer for this case. The defence had amongst others contended that her investigation on the charges against the accused as shoddy and incompetent.

[144] The case against the accused is a commercial crime, which is largely dependent on documentary evidence and testimony of the persons involved. The events pertaining to the three charges occurred in 2016 and 2017, where else the IO had only commenced investigations in November 2018. Her role was to collate the documentary evidence and statements by those involved. The IO's role is therefore minimal.

Nevertheless, I have considered and analysed her testimony and am unable to agree with the defence's contention.

[145] The defence also accused the IO of being selective in her investigation as firstly, there was no police report lodged against the accused, and secondly, only the accused was charged when the others were similarly complicit in the alleged crime committed by the accused. The simple answers to these issues are that the IO was merely assigned to investigate the crime that is alleged against the accused. She has explained that there were other officers assigned to investigate the others. As to why was the accused the only one charged, this has been addressed earlier. As for the absence of a police report, it is trite that the omission of a police report is not fatal to a prosecution. This point was made by

A the Federal Court in *Balachandran v Public Prosecutor* [2005] 2 MLJ 301 (FC).

Rizal's credibility

B **[146]** I had in the preceding paragraphs explained the reasons for accepting Rizal's testimony. I will nevertheless elaborate.

C **[147]** Rizal had never sought to downplay his role or his ill-gotten gains. He did not prevaricate and had openly admitted soliciting and receiving gratification for himself from Saidi. This was evident through my observation of him particularly during cross-examination, which I might add was gruelling. The same goes for Saidi, who was the one that initiated the bribe and ended up giving the bribe. Like Rizal, he too never sought to downplay his misdeeds. That Rizal and Saidi's character is tainted however does not mean that their evidence is to be totally rejected. A bad character is still capable of telling the D truth but it is the degree of truth that matters. Their evidence must therefore be treated with caution. It cannot be totally disregarded must be weighed against the totality of the evidence. I find the following proposition in *Shyam Sunder v State* [1997] CriLJ 35 illuminating:

E > Learned counsel for the appellant while animadverting on the above testimony of PW5 has contended that she is a lady of easy virtue. Thus, it would be highly unsafe to place reliance on her statement. We are sorry we are unable to agree with the contention of the learned counsel. We feel that it cannot be laid down as a rule in each case if a particular witness is found to be a bad character in that eventuality her F testimony is liable to be flung to the winds. To our mind, it will be a very risky proposition of law. We feel that the court while dealing with the testimony of a witness who is not of good character is required simply to examine the statement of such a witness with great care and caution. Her statement in such a case would be subject to a greater scrutiny. If the court even then comes to the conclusion that it would be safe to base the conviction on the testimony, there is no such bar which G would come in the way of the court.

[148] I am also mindful that the cornerstone of accepting the testimonies of witnesses should not be predicated on the demeanour of the witnesses alone. It bears repeating that the testimonies must be weighed against all other evidences H such documentary evidence too. The appellate court in *Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor* [2003] 2 MLJ 97 (CA) held:

I > A judge who is required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him. He must, when deciding whether to accept or to reject the evidence of a witness, test it against relevant criteria. Thus, he must take into account the presence or absence of any motive that a witness may have in giving his evidence. If there are contemporary documents, then he must test the oral evidence of a witness against these. He must also test the evidence of a particular witness against the probabilities of the case. A

> trier of fact who makes findings based purely upon the demeanour of a witness without undertaking a critical analysis of that witness' evidence runs the risk of having his findings corrected on appeal. It does not matter whether the issue for decision is one that arises in a civil or criminal case: the approach to judicial appreciation of evidence is the same.

Were the monies solicited and accepted political donations?

[149] A donation, for any purposes is still deemed as gratification as provided under s 3 of the MACC Act 2009. Saidi had offered to give a political donation to UMNO or Najib when he first met the accused. Saidi however had under cross-examination and re-examination stated that the payments to the accused were actually a commission and that it sounded better when labelled as a political donation.

[150] From the evidence, it is clear that the monies offered and paid were not political donations. The real purpose was to ensure that Jepak is awarded the project. Saidi had to enlist the accused's help as he was faced with obstacles from Mahdzir. The circumstances of the monies offered, given and received defies it being in the nature of a political donation. Firstly, the fact that the amount promised is a percentage of the project's value meant that the payment was for the accused's benefit. A bona fide donation is usually for a fixed sum. Secondly, the surreptitious manner that the payments were made. The two payments made were in cash in large sums and delivered to the accused alone at her residences. In *Public Prosecutor v Datuk Haji Harun Idris* the court opined that there are certain formalities preceding the presentation of political donations:

> Then, the 'request' for the so-called donation. That is another telling point against the accused. In ordinary circumstances, the presentation of a donation, be it by way of cheque or otherwise, is preceded by certain formalities, for example, a representative of the donor firm would personally hand it to the done at a proper place and the in the presence of witnesses: not in some 'back alley'. I am quite sure that the donee wants to be present to show that he is participating in whatever worthy cause the done is undertaking, be it politics, charity, education or welfare. The donation is then properly presented and properly acknowledge.

[151] Najib being the President of UMNO was never present when the cash was delivered on both occasions, which is highly odd considering that the so-called donation was meant for the party. Finally, there was no need to have Lawrence draw up an agreement for consultancy services if the payments were meant to be a political donation. Although the agreement could not be found and tendered as an exhibit, I am convinced that such an agreement had been drawn up. Furthermore, Rizal, Saidi and Rayyan had also confirmed the existence of this agreement. Lawrence as a disinterested witness had nothing to

gain. He was astute and steadfast when testifying. It was suggested to him during cross-examination that he was misled by Rizal who claimed to be acting on the accused's behalf when he was in fact acting on his own accord. Lawrence steadfastly disagreed and stated that Rizal's behaviour was consistent in the sense that he was acting on behalf of someone else. That Lawrence was instructed to put 15% as the alleged consultancy fee tallies with the percentage that the accused had told Rizal to convey to Saidi. The consultancy agreement was no doubt concocted to disguise the true nature of the payments.

The audio recording

[152] The prosecution had during the course of the trial, played a five-minute and 45 seconds audio recording of what seemed to be a telephone conversation between a male and female. The transcription of the recording was also produced. This recording was played to Mahdzir, Madinah and Rizal. They were asked to identify the voices in the recording. All three said it was that of Najib and Rosmah.

[153] The prosecution had attempted to admit these two items as its exhibits during the course of the trial. Learned counsel for both parties had on the 11 December 2020 submitted on the admissibility of these two items. I had on the same day made a ruling, which was not in favour of the prosecution's application. I then proceeded to give directions for parties to submit their written submissions at the end of the prosecution's case, and subsequently heard oral arguments.

[154] The prosecution in its submission had urged this court to revisit its application, and to review its earlier ruling. The defence in objecting to the application contended that the court is functus officio in having made its ruling, and that the issue is res judicata, in that a decision made cannot be revisited.

[155] I will firstly address the issue of whether this court can review its earlier ruling. No less than the apex court has held that a trial judge may review and even reverse its earlier ruling (see the case of *Dato' Seri Anwar bin Ibrahim v Public Prosecutor and another appeal* [2015] 2 MLJ 293 (FC)). I am disinclined to accept the defence's argument that the court is functus officio. A court will only be functus officio once it has completed its task. To put in into perspective, this court can only be deemed to be functus officio once it has officially completed the trial. As it stood then, the trial has not been concluded. The court was still in session.

[156] As for the argument of res judicata, a concept which is perhaps more common in civil matters, it refers to a decision that has reached its finality and

should not be litigated again. My ruling on the admissibility of these two items was merely that, a ruling, as it was made during the course of trial. It was not a decision within the context of s 3 of the Courts of Judicature Act 1964, namely, a judgment, sentence or order. It is trite law that a ruling made during the course of a trial could not be connoted as a decision, as the latter has the element of finality (see the Federal Court's judgment in the case of *Ahmad Zubair @ Ahmad Zubir bin Hj Murshid v Public Prosecutor* [2014] 6 MLJ 831; [2014] 9 CLJ 289 (FC)). On that score, I would like to add that the concept of res judicata in criminal proceedings are more relevant in raising the argument of double jeopardy, in that a person cannot be tried for the same offence more than once.

[157] I had therefore considered again anxiously the submissions that counsel for both parties had adduced pertaining to the admissibility of the audio recording and its transcriptions. I came to the conclusion that s 41A of the MACC Act 2009 is a *non-obstante* clause, which prevails over the documentary evidence provisions in the EA 1950. The section reads as follows:

> 41A Admissibility of documentary evidence
>
> Where any document or a copy of any document is obtained by the Commission under this Act, such document shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any other written law.

[158] Section 41A of the MACC Act 2009 is a specific provision which excludes the general law: *generalibus specilia derogant*. The wordings in s 41A are plain and obvious. It clearly entitles any documents or copies of them that were obtained by the MACC to be admissible in any proceedings.

[159] As for the defence's argument that s 41A does not apply retrospectively, the answer lies in the judgment of Raja Azlan Shah J (as His Highness then was) in the case of *Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15 (HC), where it was held that amending statutes are presumed to be prospective, except when dealing with procedures or evidence. That judgment was cited with approval by the appellate court in the case of *Msimanga Lesaly v Public Prosecutor* [2005] 4 MLJ 314 (CA) (see also the judgment of Suffian LP for the Federal Court in *Lee Chow Meng v Public Prosecutor* [1978] 2 MLJ 36 (FC)). Section 41A is clearly procedural in nature, as it pertains to the admissibility of documents during proceedings.

[160] In any event, the prosecution's attempt to have these two items admitted was made during the current proceedings, long after s 41A was incorporated. As I have mentioned earlier, s 41A pertains to procedural and not substantive law. The defence team had alluded to Justice Mohd Nazlan Mohd Ghazali's judgment in the case of *Public Prosecutor v Dato' Sri Mohd Najib bin Hj Abd*

Razak [2020] 11 MLJ 808; [2020] 8 CLJ 319 (HC), where the application to admit amongst others, the audio recording was dismissed. It will only suffice for me to point out that the application there was made by the accused, and not the prosecution. His Lordship's decision was premised on the provisions of the EA 1950, as the provisions of s 41A only assists the prosecution, not the accused.

[161] The defence team had also referred to Hansard in order to ascertain the meaning of s 41A. References to Hansard could not be deemed conclusive. Parliament legislates, and the court interprets. The words in s 41A as I have also mentioned earlier, are clear and unambiguous. Parliament does not legislate in vain.

[162] I have therefore come to the conclusion that the audio recording ('IDP 36') and its transcription ('IDP 163') are admissible in evidence, and convert them to P36 and P163 respectively. I must however add that the weight to be attached to them is a different consideration altogether.

DECISION AT THE END OF THE PROSECUTION'S CASE

[163] It is the court's inherent duty, to conclude whether the prosecution has made out a prima facie case against the accused at the end of the prosecution's case. The accused will only be called to enter her defence if a prima facie case has been proven against her. The fundamental task of a trial judge at the end of the prosecution's case, is to ascertain whether he is prepared to convict the accused, should the accused opts to remain silent if the defence is called. If the answer is negative, then no prima facie case has been made out against the accused, and she should then be acquitted.

[164] I had in giving the prosecution's case the maximum evaluation, find that the prosecution had succeeded in proving a prima facie case by adducing credible evidence to prove the elements of the following charges:

The first charge

That she had between January and April 2016, solicited from Saidi Abang Samsudin through Rizal Mansor, a sum of RM187.5m as an inducement to assist Jepak Holdings Sdn Bhd to obtain what is known as the Solar and Genset project from the Education Ministry through direct negotiations;

The second charge

That she had on the 7 September 2017, corruptly received RM1.5m cash from Saidi Abang Samsudin, as a reward for Jepak Holdings Sdn Bhd to obtain the Solar and Genset project from the Education Ministry through direct negotiations; and

The third charge

That she had on the 20 December 2016, corruptly received RM5m cash from Saidi Abang Samsudin, as a reward for Jepak Holdings Sdn Bhd to obtain the Solar and Genset project from the Education Ministry through direct negotiations, which if unrebutted or unexplained, would warrant a conviction under s 180(4) of the CPC.

[165] The presumption under s 50 of the MACC Act 2009 has also arisen against the accused in respect of all three charges. I had therefore called upon the accused to enter her defence. The accused was informed of the three electives available: (a) to remain silent; (b) to give unsworn evidence in the dock; or (c) to give sworn testimony in the witness stand. The accused elected to give sworn testimony in the witness stand, and tendered a witness statement pursuant to s 402B of the CPC.

THE DEFENCE

[166] Learned counsel for the accused commenced the defence by reading the defence's opening statement under s 181 of the CPC. Two witnesses gave evidence for the defence: (a) the accused (DW1); and (b) Datuk Seri Siti Azizah bt Sheik Abod (DW2).

The accused's background

[167] The accused is a native of Kuala Pilah, Negeri Sembilan, and did her secondary education at the illustrious Tengku Kurshiah College in Seremban. She then furthered her studies at The University of Malaya in Anthropology and Sociology. She went on to do her Master's in Sociology and Agriculture at the Louisiana State University, United States of America. She worked at the Bank Pertanian Malaysia upon graduating and subsequently at a company called Island and Peninsular. She ceased working after her marriage to Najib. This was in 1987. They have been married for 35 years and are blessed with two children from this union.

[168] She had assumed the title 'First Lady of Malaysia' when Najib became the Prime Minister in 2009. She was kept busy with her duties as FLOM but had also devoted much time to charitable and social causes. She has also been awarded many international and local awards for her contribution and standing in society.

[169] Permata was her brainchild. It started as an early development centre for children below the age of five but had, over the years, morphed progressively. The program had received many local and international accolades, with the accused acknowledged as the driving force behind it.

Rizal Mansor

[170] The accused stated that Rizal was contractually employed as an 'Assistant Officer with Special Functions in the Prime Minister's Office' and that he was designated as the special officer to the Prime Minister. The accused never considered Rizal as her special officer as she never had one. As far as she was concerned, Rizal's duty was as a media officer in FLOM. As a media officer, Rizal was, amongst others, entrusted with ensuring that the information channelled to the public through accredited media practitioners was accurate to avoid spreading false information about the accused.

[171] The accused was not impressed with Rizal's work or work ethic. The speeches that he had prepared for her were below par, and he was often missing from work. She had often heard grouses regarding Rizal from his superiors and colleagues. The accused maintained that her relationship with Rizal was purely for work and that she would only deal with Rizal through his superior, Datuk Seri Siti Azizah Sheikh Abod. She accuses Rizal of striking a deal with the prosecution to exculpate himself from his charges and, in turn, incriminate her for baseless charges. The accused is bemused that she is being charged and not Rizal and that she should have instead been called as the prosecution's witness to testify against Rizal as the latter had openly admitted soliciting RM25m and receiving monies from Saidi.

The first charge

[172] The accused denied ever soliciting RM187.5m from Saidi as she did not know the value of the project. She admitted to meeting Saidi and Rayyan at her house sometime in January or February 2016 but claimed that Rizal initiated the meeting without her knowledge or consent. The accused stated that Rizal had pestered her to meet the duo as they merely wanted to convey their gratitude to Najib through her. She was not keen to meet them as she did not know them personally and had been reminded by Najib not to meet with any contractors and get involved in his affairs as the Prime Minister.

[173] The accused claimed that Rizal had, without notice, told her that Saidi and Rayyan were there to meet her on the day concerned. She was caught off guard and told Rizal off for arranging the meeting without her consent. Rizal, however, managed to persuade her to meet the duo briefly on the pretext that they merely wanted to convey their gratitude to Najib. The accused relented and met the duo, who then showed her Jepak's letter dated 23 November 2015 that had Najib's minutes. The accused claimed that she merely said 'Eloklah' (That is fine); by that, she merely meant that they should do their job diligently. In his testimony, she pointed out that Rizal had said that the accused was not

in the business of helping contractors get government projects when Saidi and Rayyan initially approached him for help to see the accused.

[174] She agreed that Saidi and Rayyan had offered to make a political donation to Najib in appreciation for his minutes. The offer was 10% of the project's value but denied setting the quantum. She had no idea that Rizal had advised Saidi on the percentage he should offer her prior to the meeting, nor did she ask him to do so. She also denied telling Saidi that UMNO is in dire need of political funds and stated that she was merely the wife of a Prime Minister and was not involved in UMNO's financial affairs.

[175] She reiterated that the meeting was brief and that she had ended it abruptly as she was uncomfortable with it. She then went upstairs and did not discuss anything with Rizal, contrary to what Rizal had alleged. She, therefore, denied instructing Rizal to meet Saidi and Rayyan after that, what more telling him to raise the percentage offered from 10% to 15%.

[176] The accused pointed out that 11 of the minutes penned by Najib were obtained through Aazmey and that it is apparent that she had never assisted Jepak with the project. She also pointed out that none of the prosecution's witnesses had ever claimed that she had directed anyone to meet Aazmey to get Najib's minutes.

[177] The accused took offence with the question posed to Rizal by the learned counsel for the prosecution, namely whether she had asked Saidi and Rayyan to leave. The accused stated that she, as an Islamic Malay woman and the wife of the Prime Minister, is cultured and would have never shooed anyone away from her home despite them not being invited over. She had accommodated them in line with the virtues expected of society but ensured that the meeting was brief enough without being seen as uncouth.

[178] The accused reiterated that any donation offered by Saidi and Rayyan is meant for Najib or UMNO's benefit and that she would have never taken advantage of the offer for her herself. The accused claimed that it made no sense for her to get Rizal to meet the duo at the Lygon Cafe and negotiate with them when she could have negotiated with Saidi and Rayyan directly if she wanted to enrich herself. It was clear to her that Rizal solicited for himself and had merely used her name.

[179] As for her alleged instructions to Rizal to bring Saidi and Rayyan to meet Desmond, the accused denied the allegation as there would be no reason for her to do so when she had never solicited anything from Saidi. The accused stated that the prosecution should have called Desmond to testify as he would

be able to state whether she had indeed instructed Rizal to meet him. She had, as such, no knowledge of the agreement that Lawrence had drafted.

The third charge

[180] The accused denied ever receiving RM5m from Saidi, nor had she any knowledge about it. She reiterated that Rizal had used her name to get RM5m from Saidi for himself and that he had never once informed her of the monies allegedly paid by Saidi. She denied that Rizal had called her when he was with Lawrence at the Pavilion, what more instructing him to send the RM5m to her at Seri Perdana.

[181] The accused highlighted several factors that should cast aspersion on Rizal's claim: (a) that the two butlers that allegedly took delivery of the two bags were never called to testify; and (b) that the CCTV recordings at Seri Perdana were never produced to show that the two bags were delivered. The fact that Rizal had asked the UTK officer to alight his car before arriving at Seri Perdana proves that Rizal did not want the officer to know that he never went to Seri Perdana.

The second charge

[182] The accused admitted meeting Saidi and Rayyan on the day concerned. However, similar to the first meeting, she claimed that Rizal had yet again arranged for them to meet her without making prior arrangements. She had no idea they had come to see her and that she was exercising when they came. Like before, she agreed to meet the duo out of courtesy and was profusely sweating when she came down. She was as such uncomfortable and did not want the meeting to prolong. She claimed that Rizal had breached the standard operating procedure by not ensuring that Saidi and Rayyan had reported themselves at the guard house, nor did they fill up the guests' record book.

[183] The accused confirmed that Saidi had shown her his proposal letter for a water-well project for Sarawak and that he had asked her help to forward the letter to Najib. She was shocked as she had never assisted any contractor in getting government contracts and believed that Saidi should have approached Najib himself. The meeting was a brief five minutes. She continued with her exercise after the duo left.

[184] She denied that Saidi had told her that he had come with cash as promised and that he had only broached the topic of the water-well project. She also denied seeing any bags that contained RM1.5m in the living room where they met, more so having instructed her butlers to put the bags in her room. She asserted that this was a tale concocted by Rizal, Saidi and Rayyan.

On whether she knew Saidi and Rayyan

[185] The accused referred to the prosecution's submissions at the end of the prosecution's case where it was submitted that she had lied in her statement to the MACC dated 29 October 2018 ('the MACC statement'). She referred to the relevant paragraphs in the statement, which are as follows:

> Soalan: Adakah kamu mengenali Saidi? Sejak bila kamu mengenali Saidi?
>
> Jawapan: Saya tidak mengenali siapa itu Saidi.
>
> Soalan: Adakah kamu mengenali Rayyan? Sejak bila kamu mengenali Rayyan?
>
> Jawapan: Saya tidak mengenali siapa itu Rayyan.

[186] The accused clarified that what she had meant was that she did not know Saidi and Rayyan before she had met in the first meeting. The accused went on to state that she had met many individuals, being the Prime Minister's wife, and that she could not possibly remember every single person she met.

On whether she had asked Madinah, Alias and Mahdzir to expedite the project

[187] The accused denied ever approaching these trio and telling them to expedite the project process. She referred her statement to MACC dated 29 October 2018, where she denied that Madinah had accosted her to the car after the Permata event and told her to speed up the project. However, she stated that even if she did ask Madinah for help on that occasion, it would have been for Permata.

[188] She heaped scorn on the suggestion that she needed the trio's help on the project, as she could have easily sought Najib's help, who was then the Prime Minister and Finance Minister if she had a vested interest in the project. According to the accused, Najib wielded more power to approve and expedite any payments due for the project.

The audio recording

[189] The accused merely stated that the recording sounded like a conversation between her and Najib. However, she would be unable to ascertain it conclusively without the recording being scientifically verified.

[190] The accused nevertheless stated that she and Najib, like any other married couple, would share opinions. In referring to the conversation in the recording, she stated that she had never forced Najib to follow her views and that she had merely voiced her opinion and feelings. She also stated that if she had indeed possessed an 'overbearing nature' alleged by the prosecution, her

marriage with Najib would not have lasted for 34 years. In any event, the accused highlighted that the project was never mentioned in the recording.

Datuk Seri Siti Azizah bt Sheikh Abod's testimony ('Azizah')

[191] Azizah had also tendered her witness statement under s 402B of the CPC. She was able to read up to para 8 of her witness statement. In exercising my discretion under s 402B of the CPC, I had deemed Azizah's witness statement to be read without the necessity for her to read it aloud. Section 402B of the CPC states that a statement may be tendered in evidence if the criteria set out under s 402B(2) are fulfilled. If the court directs so, the witness's statement will only need to be read aloud: s 402B(6) of the CPC. I am also guided by Federal Court's decision in *Miss Rossarin Nuekaew v Public Prosecutor* [2017] 5 MLJ 1; [2017] 8 CLJ 503 (FC). One of the issues raised in that case was whether a witness's written statement must be read aloud at the trial to be admitted as evidence. The relevant excerpts from the apex court's judgment are as follows:

> [9] It is to be noted that s 402B of the CPC allows for proof by written statement of any witness subject to the conditions as set out in paras (a), (b) and (c) of sub-s 402B(2) of the CPC. The conditions are as follows:
>
> (a) the witness statement must be signed by the maker;
>
> (b) the witness statement contains a declaration by the maker that the statements made in the witness statement are true to the best of his knowledge and belief; and
>
> (c) a copy of the witness statement is served by or on behalf of the party proposing to tender it on each of the other parties to the proceedings not later than 14 days prior to the trial unless the parties otherwise agree.
>
> ...
>
> [13] *We are of the view that from a proper reading of sub-s 402B(6) of the CPC, that subsection does not require the witness statement to be read aloud in court in every situation. The court can direct that only a portion of the witness statement to be read or not at all.*
>
> ...
>
> Whether the witness statement to be admitted as evidence in court must be read aloud at the trial?
>
> [17] *We are of the view that from the wording of sub-s 402B(6) of the CPC. it is clear that so much of the witness statement to be admitted in evidence must be read aloud at the trial. However, this prerequisite is not to be applied across the board and without exception. Under this subsection, there is an exception to this general rule. The exception is expressed in the use of the words 'unless the court otherwise directs', which means that the court can dispense with the requirement for the witness statement to be read aloud if the court finds it appropriate to do so.*

...

[19] *We are of the view that the court can use its discretion when it considers appropriate and with the concurrence of all parties, to dispense with the requirement that the witness statement must be read aloud. This is to avoid an unnecessary lengthy reading of such statement in court and so as not to defeat the purpose of the insertion of s 402B into the CPC, which is to provide a speedy disposal of criminal cases.*

...

[25] *Applying the test and the principle laid down in Hee Nyuk Fook, it is our judgment that the requirement to read aloud the witness statement under sub-s 402B(6) of the CPC is only directory and not mandatory*. In coming to this conclusion, we have considered the subject matter of the case which was in relation to the admissibility of evidence by way of witness statement of the chemist ('SP1'). The witness statement was prepared by the maker by signing the witness statement to show that the statement made by the maker was based on truth and to his knowledge. The witness statement was duly served on the other party. We also noted from the records of the proceedings of the trial court that the appellant had also agreed and had no objection to the tendering of the statement during the proceedings.

...

[27] *We are of the considered view that based on the purpose or object of the insertion of the new s 402B into the CPC as shown through the explanatory statement of the Bill and the Hansard and applying the principle as laid down in s 17A of the Interpretation Acts, the requirement to read aloud the witness statement of the chemist (SP1) is not mandatory and it can be dispensed with if the court finds it appropriate to do so and it is satisfied that no failure of justice will be occasioned by such dispensation.* (Emphasis added.)

[192] I elected to take this approach as the witness will be away performing Umrah from 26 December 2021 until 20 January 2022. The only trial date left was 4 February 2022, which meant very little time to complete the trial. I was grateful that learned counsel for both parties was amenable to my decision as it would save precious judicial time.

[193] Azizah had been in civil service since the early 70s and had, over the years, risen through the rank. She retired from service in 2006 but returned to work in 2006 when she was appointed as Najib's special officer, who was then the Deputy Prime Minister. Her appointment as Najib's special officer continued when the latter became the Prime Minister in 2009. Her appointment as a special officer had been on a two-year contractual basis until 2018.

[194] As Najib's special officer, Azizah coordinated Rosmah's affairs vis a vis Najib's programmes when he was the Prime Minister. She had various duties, such as writing Rosmah's speeches and arranging Rosmah's daily routine. She

confirmed that FLOM's department in the Prime Minister's office was established when Najib became the Prime Minister and that she was its director.

[195] She strongly refuted Rizal's testimony regarding the accused, where he had, amongst others, said that the accused had immense influence over the civil servants who would accede to any requests made or instructions given, including being able to influence Najib to transfer any government officers to if they did not adhere to her commands. Azizah had known the accused since 1971, when they were both undergraduates at the Universiti Malaya. To Azizah, Rosmah is intelligent, multi-talented and hands-on as she is quintessentially a perfectionist.

[196] Azizah had never seen the accused deal with any government servants, as she would liaise with them as head of FLOM. She, therefore, found Rizal's description of civil servants being fearful and intimidated by the accused false.

[197] She concurred that Rizal was appointed as a special officer of the Prime Minister's office on a two-year contract basis in 2009. He was designated as the media officer. As far as Azizah is concerned, Rizal reported to her alone as his superior. As a media officer, Rizal was entrusted to liaise with the media regarding the accused's programmes and assist Azizah in organising and handling FLOMS's official affairs. As far as Azizah is concerned, Rizal was not the accused's special officer, and he had merely given himself that title for his benefit.

[198] Azizah found Rizal's work abysmal. His speech writing was not up to the standard expected and was often missing from the office. Rizal would tell Azizah that he would work from his office in the city centre as he found it more convenient to work from there.

[199] Azizah had no idea that Rizal had been soliciting and receiving monies from Saidi and Rayyan. She would have reported it to the higher-ups in the Prime Minister's office had she known of Rizal's misdemeanours as it was an abuse of power of a government servant and a crime too. She also never knew that Rizal had communicated with Mahdzir and Madinah regarding the project and said this was beyond his job scope. Azizah was also unaware of Rizal's lavish lifestyle and had only come to know about it from the media during this trial. In her opinion, his lifestyle defies that of a Grade 48 government officer.

Defence's application to recall Saidi

[200] The defence applied to recall Saidi after Azizah had concluded giving evidence. Counsel for both parties submitted at length as the prosecution had objected to the request.

[201] It is undeniable that the court has powers under the EA 1950 and the CPC to recall any witness at any stage of the proceedings. The primary consideration, as provided under s 425 of the CPC, is whether the witness's evidence is essential to the just decision of the case.

[202] What is just would depend on the facts of the case itself. In the words of Justice Abdul Malik in the case of *Public Prosecutor v Ahmad Hussin bin Zamir Hussin [Myanmar]* [1999] MLJU 254; [1999] 3 CLJ 656 (HC):

> The power is conferred to the court in its quest to serve justice and to do justice between the parties. After all, the court's only master is Justice and it is Justice that the court must be subservient to. It has been said time and again that justice cannot be viewed from the angle of the prosecutor or the accused's person, rather justice should be viewed from the point of view of an orderly society.

[203] I had gone through every page of the notes of proceedings on Saidi's cross-examination. The witness concerned had been subjected to many days of cross-examination and had been crossed vigorously on the subject matter that the defence wishes to revisit. I also noted that this subject matter had been addressed extensively when the defence made an application to impeach Saidi.

[204] In my opinion, the defence has not raised any valid grounds to justify recalling Saidi. To recall Saidi based on the reasons given by the defence would be tantamount to subjecting him to another round of cross-examination on a subject that I opine had been fully addressed. It would not be essential to the just decision of this case to allow the defence's application for Saidi to be recalled. I had therefore dismissed the application.

[205] The trial was finally concluded after 42 days of trial over two years, commencing on 5 February 2020 and concluding on 23 February 2022. A total of 23 witnesses for the prosecution and two witnesses for the defence testified. The trial would have been concluded earlier if not for the government's numerous Movement and Conditional Control Orders due to the COVID-19 pandemic. Some counsel and witnesses were also infected with the dreaded virus during the trial, which meant that some trial dates had to be adjourned. Fortunately, everyone was in good health in the end.

Prosecution's application to impeach the accused

[206] The prosecution sought to impeach the accused on the basis that she had in her witness statement explained how she got to know Saidi, which is contrary to the MACC statement.

[207] The defence not surprisingly objected to the impeachment application. The prosecution also sought leave to cross-examine the accused's character under s 54 of the EA 1950 based on the eight charges under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 and nine charges under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activity Act 2001 ('the AMLATFPUAA 2001') that the accused is facing in Criminal Trial No WA-62R-47–10 of 2018 ('the AMLA case'), which are also incidentally fixed in this court.

[208] Regarding the impeachment application, the pertinent issue is whether the accused's statement made under s 32 of the AMLATFPUAA 2001 can be admitted as evidence and subsequently used by the prosecution to impeach her. I am of the view that the statement is admissible under s 40 of the same Act and that the prosecution can proceed with its attempt to impeach her. I am, however, of the belief that the provisions for impeachment are to be carried out under ss 145 and 155 of the EA 1950 and not s 72 of the AMLATFPUAA 2001 as the latter pertains to a trial of an offence under the Act, which is not the case here.

[209] As for the application to cross-examine the accused's character under s 54 of the EA 1950, I have taken cognisance of the prosecution's proposal to cross-examine the accused on the charges that she is currently facing under the AMLAATFPUAA 2001, her bank statements and the alleged deposits made by a Roslan bin Sohari into her account. I am grateful that the prosecution has been candour in making known its intention in advance. I am satisfied that the prosecution has satisfied the requirements of s 54(2)(b) EA 1950. However, I will not allow any questions on the facts of the AMLAATFPUAA charge that the accused is facing, except that she has been charged under that Act. I take the view that the probative value of the issues that the prosecution intends to bring up does not outweigh the prejudicial effect that the accused may suffer.

DUTY OF THE COURT AT THE CONCLUSION OF THE TRIAL

[210] The accused is presumed innocent until proven guilty. The burden lies upon the prosecution to prove the accused's guilt beyond reasonable doubt throughout the trial. Unlike the prosecution, there is no similar burden placed on the accused to prove her innocence, as she merely needs to cast reasonable doubt on the prosecution's case for an acquittal (s 182A of the CPC; *Public*

Prosecutor v Abdul Rahman bin Akif [2007] 5 MLJ 1 (FC)).

[211] The procedure for the court at the end of the trial is set out under s 182A of the CPC:

> 182A Procedure at the conclusion of the trial
>
> (1) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt
>
> (2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.
>
> (3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal.

[212] The Federal Court in *Public Prosecutor v Mohd Radzi bin Abu Bakar* held that the following steps set out in *Mat v Public Prosecutor* [1963] 1 MLJ 263 (HC), should be followed at the end of the trial:

(a)	If you are satisfied beyond reasonable doubt as to the accused's guilt.	Convict
(b)	If you accept or believe the accused's explanation.	Acquit
(c)	If you do not accept or believe the accused's explanation.	Do not convict but consider the next steps below.
(d)	If you do not accept or believe the accused's explanation, and that explanation does not raise in your mind a reasonable doubt as to his guilt.	Convict
(e)	If you do not accept or believe the accused's explanation, but nevertheless it raises in your mind a reasonable doubt as to his guilt.	Acquit

[213] As the presumption under s 50 of the MACC Act 2009 had been invoked, it is incumbent on the accused to rebut the presumption of corrupt intention on a balance of probabilities. I will address the accused's defence for each charge in sequence.

FINDINGS

The first charge

[214] The accused had essentially denied instructing Rizal to solicit from Saidi. She insisted that Rizal could not speak or act on her behalf and that the meeting with Saidi and Rayyan was unplanned and had caught her by surprise.

She also maintained that Najib had told her not to get involved with government affairs and had abided by that instructions. That Rizal had met Desmond and subsequently liaised with Lawrence to prepare the consultancy agreement was beyond her knowledge.

[215] The upshot of the accused's defence is that Rizal had gone on a frolic of his own by taking advantage of the accused's name. I find the accused's denial untenable. To suggest that Rizal would boldly arrange such a scheme without the accused's knowledge is quite far-fetched. For instance, why would Rizal take the trouble to bring Saidi and Rayyan to meet the accused at her residence if he had wielded so much power? He could have easily used his position to concoct a deal as both Saidi and Rayyan deemed Rizal as the accused's aide. As I have stated previously, whether Rizal's official designation was the accused's special officer is immaterial as he was the accused's trusted aide. He had been with her for seven years since 2009. The fact that the accused had allowed Saidi and Rayyan to be at her residence and met them lends credence to this fact. I accept that the accused would not have told the duo to go away as it would have been ill-mannered of her to do so. However, I find it incredulous to suggest that Rizal had arranged for the duo to be at the accused's residence without her knowledge. It was, after all, her private residence. The accused herself has stated that she led a hectic life and would often be occupied with engagements. It is difficult to accept that Rizal had taken a chance for her to be home and then brought over Saidi and Rayyan without an agenda. It is more likely than not that Rizal had informed the accused and made prior arrangements for the duo to meet the accused.

[216] I also find it difficult to accept that Rizal had solicited for himself. 15% of RM187.5m is a staggering figure. Rizal was merely an employee in the Prime Minister's Office. It would be preposterous to accept that Rizal had drawn up this scheme for his benefit, as he would surely be found out. I doubt that Rizal would take the risk of such magnitude. I am of the view that he was only able to solicit confidently as he was instructed by the accused.

[217] That Rizal went on to meet Desmond and subsequently liaise with Lawrence to draw up the consultancy agreement adds weight to the fact that the solicitation was for the accused's benefit. Rizal had told Desmond why he was asked to meet Desmond, who then told Rizal to liaise with Lawrence. Why would Rizal take a chance to meet Desmond and tell him what the accused's instruction was if not because the accused instructed him to do so? If it were Rizal's scheme, he would have been caught out as the possibility of the accused knowing about it, seeing that Desmond is a close friend, is high. Rizal could have easily used his lawyer or any other lawyer if this scheme was his own and

not chance it by getting Desmond's assistance.

[218] The accused also claimed that she would have negotiated the deal herself with Saidi and Rayyan if it was for her benefit. It would have been undignified of her to do so. The accused appears to be dignified and thinks very highly of herself. This was evident from her demeanour on the witness stand and her standing in society as the Prime Minister's wife then. Negotiating openly would have also exposed her misdeeds. In the prosecution's description, she is no fool and is far too clever and wily to make the demand herself. She had used and instructed Rizal to make her bidding and solicit from Saidi for her benefit.

[219] I therefore find that the accused had failed to rebut the presumption of corrupt intention on a balance of probabilities and that the charge of solicitation has been proven beyond a reasonable doubt.

The third charge

[220] The accused denied receiving the RM5m at Seri Perdana. She claimed to have been at her Langgak Duta residence. She also reiterated that Rizal had pocketed the RM5m for himself and that the trip to Seri Perdana was a charade.

[221] It was no coincidence that the RM5m was paid after the letter of award dated 10 November 2016 had been issued to Jepak. Saidi had taken out a loan of RM16m for Jepak and used RM5m to make the payment. This was, of course, after Rizal reminded him of his promise to pay the accused.

[222] That RM5m had been withdrawn, brought to the Pavilion and refused to be accepted by Lawrence had been established during the prosecution's case. The accused denied that Rizal had called her when he was with Lawrence and that she had told him to send the cash to Seri Perdana. I find her denial untenable, as it defies belief that Rizal would have gone through the trouble of firstly going over to Lawrence to deliver the cash. He could have easily planned to take the cash through some other means. That he went to see Lawrence to deliver the RM5m tallies with the facts in the solicitation charge, namely that Lawrence was entrusted with drawing up the consultancy agreement to facilitate the payments to be made by Saidi. Rizal could not have speculated that Lawrence would refuse to accept the cash as he would have otherwise not bothered to instruct Saidi to go to Lawrence's office with the cash. It made perfect sense for Rizal to call the accused as the whole scheme was the accused's own.

[223] Why would Rizal take the trouble to drive over to Seri Perdana if he

wanted to pocket the cash for himself? He travelled there with Ahmed, who was with him throughout the journey. It was never suggested that Ahmed was in cohorts with Rizal. Ahmed's testimony was unblemished. It is worth repeating that at the end of the prosecution's case, I had established that Ahmed was a disinterested witness and credible. Ahmed saw Rizal instructing the accused's butlers to carry the bags into Seri Perdana. I also accepted Rizal's explanation of why he got the UTK officer to alight his vehicle before arriving at Seri Perdana.

[224] The accused had, in her witness statement, merely denied being at Seri Perdana. Her counsel had, in cross-examining Rizal, suggested that she was at her Langgak Duta residence. However, under cross-examination, she initially claimed: 'I was all over the place in Kuala Lumpur' on that day. On another date, during cross-examination, the accused claimed she was at her Langgak Duta residence. I believe that the disparity in her explanation, plus the fact that she had never mentioned it in her witness statement or statement of defence, bolster the prosecution's case that she was at Seri Perdana. It is a fact that Seri Perdana was her official residence. There would be no reason for Rizal to deliver the bags with RM5m cash there if not for the fact that they were meant for the accused.

[225] I find that the accused has failed to rebut the presumption on the third charge on a balance of probabilities and that the prosecution has proven the third charge beyond a reasonable doubt.

The second charge

[226] Similar to the first meeting, the accused claimed that this meeting was yet again unplanned. She also denies receiving the two knapsacks containing RM1.5m cash and that the only thing that had transpired on that day was Saidi asking for her help with the water-well project that he intended to propose to the Ministry of Education.

[227] If she were caught unaware of the first meeting and unhappy with Rizal, Rizal would not have the gall to arrange another unplanned meeting with the accused.

[228] That Saidi had withdrawn RM1.5m and put the cash in the two knapsacks is irrefutable. It has also been proven that Saidi brought the two knapsacks to the accused's Langgak Duta residence and brought them into the living room. Rizal, Saidi, Rayyan and Shamsul's testimony has restated this fact.

[229] Unlike the RM5m cash, Rizal was not accused of taking the two knapsacks with the cash for himself. The accused merely denied that she had

seen the knapsacks and that Saidi had told him that he had brought the money as promised to which the accused responded with a 'Hmmm'. At the end of the prosecution's case, I found Saidi to be a credible witness and accepted his version. In any event, I have found that Rizal and Rayyan's testimony has amply supported Saidi's version.

[230] I am of the view that the accused's defence is a bare denial. Her denial is devoid of any merits in light of the compelling testimonies of Rizal, Saidi, Rayyan and Shamsul. It is immaterial whether the knapsacks were handed over to her physically. That the knapsacks were left in the living room signifies delivery. That she had instructed her butlers to bring the knapsacks upstairs to her room signifies acceptance. I am resolute that the accused has failed to rebut the presumption on a balance of probabilities, and that the prosecution has proven its case beyond a reasonable doubt in respect of the second charge.

The accused's influence and character

[231] The accused emphatically denied interfering in any of the government's projects, mainly the project concerned. She contended that Najib had reminded her not to get involved with any contractors and that she was to remain dutifully as his wife. The accused maintained that she feared Najib's wrath and would never attempt to influence him, let alone force or advise him on matters concerning government affairs.

[232] All these statements attributed to Najib are hearsay and are inadmissible in evidence, as Najib did not testify. Only Najib could verify what the accused claimed he had said.

[233] I acknowledge that Aazmey had played a significant part in getting the minutes from Najib for Jepak's benefit, but the facts evince that the accused, too, played a significant part. For instance the accused had told Madinah 'You tengok sikit projek solar Jepak, Cepatkan sikit' (Look into the Jepak solar project. Expedite it) during one of Permata's event. There is no reason for Madinah to concoct a lie to implicate the accused. What would be her motive? If there was any, this was never put to her.

[234] Prior to a Permata's Board of Trustees meeting, Alias received a phone call from Azizah, who told him that the accused wanted to be appraised of the project. The accused had asked him when the contract would be executed and told him to expedite it as payments could otherwise not be made. Mahdzir, too was told by the accused during a breaking of fast function to 'You tengok la projek solar Cikgu Aazmey. Cepatkan sikit' (Look into Cikgu Aazmey's solar project. Speed it up). The accused claimed that Mahdzir and Alias had a vested interest in the project and that they had cast aspersions on the accused to

camouflage their wrongdoings on the project. Firstly, I find no credible evidence to prove that Mahdzir or Alias had attempted to profit from the project. There were also many accusations thrown at them during cross-examination, particularly Mahdzir. From my observation, Mahdzir had steadfastly denied all the accusations. He never showed any signs of being nervous or apprehensive in refuting the negative aspersions cast during the cross. He was resolute.

[235] In my opinion, Mahdzir attempted to do the right thing. Bearing that Saidi was a close friend, he could have easily cleared the path for Jepak's benefit. The evidence shows that Mahdzir wanted Jepak to go through the proper process. He did not want to circumvent the Ministry's procedure. He had even gone to the extent of trying to persuade Najib on two occasions personally. On the first occasion, Mahdzir tried to convince Najib to use an open tender for the project and not through direct negotiations with Jepak. Najib was adamant and told him to carry out his instructions. On the second occasion, Mahdzir advised Najib to defer the issuance of the letter of award to Jepak as the latter had not met many of the Ministry's requirements. Mahdzir also complained to Najib of Saidi and Rayyan's incessant harassment and disrespectful attitude toward him as a Minister. Nevertheless, Najib again ignored his plea and instructed him to follow his instructions. It is indeed amazing that a contract worth RM1.25 billion could simply be awarded merely by penning minutes without going through the expected procedures that will serve to check and balance.

[236] What was most telling was Rizal's active lobbying and constant harassment of those that had a part to play in the project, such as Mahdzir, Madinah and Othman, amongst others. That Rizal had acted according to the accused's instructions or for the accused's interest had been established. I doubt that they would have carried out Rizal's instructions as he was not a high-ranking officer, if not for the fact that he was doing it on the accused's behalf. He was, however, not just a special officer. He was the accused's special officer or, at the very least, the accused's trusted aide. Many of the prosecution's witnesses have attested to this, which can only mean it is true. Azizah's testimony does not lend any support to the accused's defence as she had merely stated what is expected of Rizal in his job capacity. Two incidents stood out to prove the accused's active interference. First, there was the occasion where Othman from the Finance Ministry had told off Rizal and Saidi when they came to see him with a letter that had Najib's minutes stating his agreement for the Ministry to negotiate directly with Jepak. In chastising the duo, Othman had told them that he serves the public, not politicians. When the duo complained to Rizal, the latter had, in turn, told the accused, who a few days later told Rizal that 'Aku dah cakap dengan laki aku dah' (I have already told my husband). A few days later, the Finance Ministry's approval was issued. The

second occasion was regarding cl 11 of the letter of award that Saidi and Rayyan had issues with. Mahdzir did not relent when they came to see him and asked for the clause to be taken out. That changed when Saidi called Rizal and passed the phone to Mahdzir. Rizal told Mahdzir to do as told and reminded him that 'Mem', the accused, was aware of the project. That was enough to compel Mahdzir to instruct his officers to take cl 11 out. This incident was after Mahdzir had met Najib twice. It was clear to Mahdzir that the accused was in 'Jepak's team'. He was not wrong.

[237] In her witness statement, the accused did not assertively state that the voices in the audio recording were not of her and Najib. No less than three witnesses, namely Rizal, Mahdzir and Madinah, have positively identified the voices in the recording as that of Najib and the accused. These three are familiar with Najib and the accused's voices. I do not doubt that they were right. The accused had attempted to downplay the conversation in the recording by relating it to a typical discussion between a husband and wife. It, however, was no ordinary conversation between spouses, for it was about government affairs. It is clear from the audio recording that the accused gave instructions to Najib on government affairs. Her tone was commanding and contrary to her contention that she heeded Najib's prohibition on not meddling in government affairs. I say this with the greatest of respect, but it is apparent that the accused dominates Najib. She has control over him. She had no business interfering in Najib's duties or the government's affairs, but she did. Rizal was telling the truth when he said that the accused has an overbearing nature and the ability to influence decisions in the civil service. He has worked with her for many years and would have been able to witness this personally. That the likes of Mahdzir, Madinah and Alias never questioned any queries or instructions from the accused or Rizal adds weight to this factor. The accused does not strike as someone Rizal could have taken advantage of. She has a steely character and would not hesitate to admonish anyone. It was also evident during the trial as she was not cowed when being cross-examined by the learned counsel for the prosecution, which I might add is no mean feat considering the learned counsel's eminence. I find it highly improbable that Rizal would have arranged for the second meeting without the accused's knowledge and consent.

[238] In her MACC statement, the accused stated that she did not know who Saidi and Rayyan were when questioned on the project. In her witness statement, she attempted to explain her answers then. She claimed that she had meant that she did not know them prior to the first meeting. She also claims that she meets many individuals and could not possibly recall all their faces and names. I have great difficulty accepting her explanation. The questions posed to her were simple. The questions were quite simply whether she knew them. Her explanation in the witness statement proves that she does. Her false denial

in the MACC statement proves that she had attempted to distance herself from the dealings that she had made with them regarding the project.

DECISION

[239] The court shall at the conclusion of the trial consider all the evidence presented, and decide whether the prosecution has proven its case beyond reasonable doubt (s 173(m)(i) of the CPC). I have conducted a maximum evaluation of all the evidence by the accused and prosecution at the end of the trial, and find that the accused has failed to rebut the presumption under s 50(1) of the MACC Act 2009 on a balance of probabilities that the:

(a) solicitation for RM187.5m under the first charge was corruptly solicited as an inducement;

(b) the gratification of RM1.5m under the second charge was corruptly received as a reward; and

(c) the gratification of RM5m under the third charge was corruptly received as a reward, for herself to help Jepak in getting the project awarded to it through direct negotiations. The accused's defence was a bare denial devoid of credible evidence and unsubstantiated in order to create a reasonable doubt. In the upshot, the prosecution has succeeded in proving its case beyond a reasonable doubt in respect of all three charges. The accused is therefore guilty of all three charges under s 16(a)(A) of the MACC Act 2009.

MITIGATION

[240] As customary before passing sentence, learned counsel for the accused was invited to submit factors that the court could consider for mitigation. Learned counsel for the accused submitted six grounds for this court to consider, which I shall refer to in sequence:

(a) that the accused is a single mother, as her husband, Najib, had recently been found guilty and sentenced to 12 years imprisonment commencing from 23 August 2022. She is the only one taking care of the household including her grandchildren;

(b) the accused is 70 years old and requires medical treatment from hospitals, as she suffers from Cervical Spondylosis, Osteoarthritis on both knees and Chronical Adrenal Insufficiency;

(c) she has no previous conviction;

(d) she has made significant contributions to the nation when she was the First Lady through various charitable work, and in particular the

Permata Negara program. The Permata Negara program has benefitted many children of this country and is continuing until now;

(e) she is a housewife with no source of income, and has no savings to pay any fine imposed; and

(f) she has rendered full cooperation to the authorities during the investigation stage.

[241] The accused then sought permission to speak. She spoke of the injustice that she and the family had suffered. She also elaborated on the work that she had done through Permata. She seeks for the court's mercy in passing sentence.

[242] Learned counsel for the accused asks for a sentence of one day for each charge and for the sentence to run concurrently. Counsel also asks for a minimum fine be imposed, in view of the fact that the accused has no means to pay.

[243] The prosecution conversely urged this court to pass a heavy sentence due to the gravity of the offence, namely the amount involved, and that a message must be sent to deter corruption, which has become rampant of late. As for the fine, it was submitted that s 24(1) of the MACC Act 2009 makes it mandatory for a fine to be imposed based on the quantum set out in the section.

SENTENCING

[244] I had taken into consideration the mitigating factors submitted by the learned counsel for the accused and also the prosecution's response.

[245] The foremost consideration in deciding the appropriate sentence is public interest. The sentence must reflect society's disapproval or revulsion of the crime. The sentence must also reflect the gravity of the offence committed. It should also serve as a deterrent to the accused and others from committing a crime of this nature. Wan Yahya J (as he then was) in *Hari Ram Seghal v Public Prosecutor* [1981] 1 MLJ 165 (HC) set out the four primary objectives of sentencing:

> Our courts have a long time since progressed from the 'eye for an eye' and 'tooth for a tooth' type of justice. The avowed aims of punishments are *retribution, justice, deterrence, reformation and protection*, but it is never intended to act as a vehicle of vengeance. (Emphasis added.)

[246] The punishment prescribed for an offence under s 26(a)(A) of the MACC Act 2009 is provided for under s 24(1) of the same Act, which states as follows:

Section 24. Penalty for offences under sections 16, 17, 18, 20, 21, 22 and 23

(1) *Any person who commits an offence under* sections 16, 17, 20, 21, 22 and 23 shall on conviction be liable to —

(a) (a) imprisonment for a term not exceeding 20 years; and

(b) (b) a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand ringgit, whichever is the higher.

[247] Under s 24(1) of the MACC Act 2009, imprisonment shall be imposed, but not for a term exceeding 20 years. A fine is also mandatory, where the amount should not be less than five times the sum of the gratification forming the subject matter of the charges. The punishment provided for under this section is undoubtedly heavy, which signifies the seriousness of the offence of corruption.

[248] Corruption has reached almost every level of society. It must be curtailed before it becomes pandemic. If corruption is left unbridled, our society will come to accept it as a way of life or business.

[249] The accused is sentenced to ten years of imprisonment for each charge with the sentences to run concurrently. The sentence is to run from the date of judgment. The sentences are to run concurrently as the offences committed are intimately connected with each other. The accused is also fined a total of RM970m for all three charges, and in default shall be imprisoned for ten years to run concurrently for each fine in accordance with s 283(1) of the CPC. The breakdown of the fine imposed is as follows:

Charge	Amount	Five times the sum of gratification
First charge	187.5mil	937.5mil
Second charge	1.5mil	7.5mil
Third charge	5mil	25mil
	Total	970mil

[250] Learned counsel for the accused stated that the accused will lodge an appeal to the Court of Appeal and pray that the prison sentence and fine be suspended pending appeal. The prosecution does not object. I am therefore minded to suspend the prison sentence, the payment of the fine and the execution of the payment of the fine until the disposal of the accused's appeal to the Court of Appeal. The bail of RM2m posted previously is to be extended on the same terms until the disposal of the appeal.

Order accordingly.

Reported by Ahmad Ismail Illman Mohd Razali